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GWICH'IN COMPREHENSIVE



LAND CLAIM AGREEMENT

VOLUME I

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COMPREHENSIVE LAND CLAIM AGREEMENT
BETWEEN
HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AND
THE GWICH'IN
AS REPRESENTED BY
THE GWICH'IN TRIBAL COUNCIL

VOLUME I



Indian and Northern
Affairs Canada

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et du Nord Canada

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et les Gwich'in représentés par le Conseil tribal des Gwich'in

Volume I



GWICH'IN COMPREHENSIVE LAND CLAIM AGREEMENT

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VOLUME I
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PREAMBLE

WHEREAS the Gwich'in have traditionally used and occupied lands in the Northwest Territories and the Yukon from time immemorial;

WHEREAS Treaty 11 was signed at Arctic Red River on the 26th day of July, 1921, and at Fort McPherson on the 28th day of July, 1921, with chiefs and headmen representing the Gwich'in (also known as the Loucheux);

WHEREAS following the signing of Treaty 11, cash grants were issued to the Gwich'in Metis;

WHEREAS the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada;

WHEREAS the Gwich'in and Canada have unresolved differences with respect to the interpretation of aboriginal and treaty rights;

WHEREAS the Gwich'in and Canada have negotiated in order to define and give effect to certain rights of the Gwich'in as set out in this agreement, which is a modern treaty;

WHEREAS the Gwich'in, in a vote held between September 16 and 20, 1991, ratified the July 13, 1991 text of this agreement;

WHEREAS following Gwich'in ratification of the agreement, land descriptions were appended, the Yukon transboundary agreement was made more detailed and the text of the agreement was revised by the parties to improve its clarity;

WHEREAS the Gwich'in Tribal Council has approved by resolution the text of this agreement;

WHEREAS Canada has approved this agreement by Order-in-Council P.C. 1992-757, dated April 10, 1992;

AND WHEREAS representatives of the Gwich'in and Canada are authorized to sign this treaty which, when given effect by Parliament in settlement legislation, will be recognized as a land claim agreement under the *Constitution Act, 1982*;

NOW THEREFORE IT IS AGREED:

1 OBJECTIVES

1.1 The Gwich'in and Canada have negotiated this agreement in order to meet these objectives:

- 1.1.1 To provide for certainty and clarity of rights to ownership and use of land and resources;
- 1.1.2 To provide the specific rights and benefits in this agreement in exchange for the relinquishment by the Gwich'in of certain rights claimed in any part of Canada by treaty or otherwise;
- 1.1.3 To recognize and encourage the Gwich'in way of life which is based on the cultural and economic relationship between the Gwich'in and the land;
- 1.1.4 To encourage the self-sufficiency of the Gwich'in and to enhance their ability to participate fully in all aspects of the economy;
- 1.1.5 To provide the Gwich'in with specific benefits, including financial compensation, land and other economic benefits;
- 1.1.6 To provide the Gwich'in with wildlife harvesting rights and the right to participate in decision making concerning wildlife harvesting and management;
- 1.1.7 To provide the Gwich'in the right to participate in decision making concerning the use, management and conservation of land, water and resources;
- 1.1.8 To protect and conserve the wildlife and environment of the settlement area for present and future generations; and
- 1.1.9 To ensure the Gwich'in the opportunity to negotiate self-government agreements.

2

DEFINITIONS

2.1.1

In this agreement,

"act" includes ordinance;

"agreement" means this agreement and "the date of this agreement" means the date on which it is signed by representatives of Her Majesty the Queen in Right of Canada and the Gwich'in after ratification;

"artificial boundary" means a straight line joining two identified geographic locations or survey monuments;

"bed" of a body of water means the land covered so long by water as to wrest it from vegetation, or as to mark a distinct character upon the vegetation where it extends into the water or upon the soil itself;

"conservation" means the management of wildlife populations and habitat to ensure the maintenance of the quality and diversity including the long-term optimum productivity of those resources, and to ensure a sustainable harvest and its efficient utilization;

"conservation area" means game reserves, sanctuaries, migratory bird sanctuaries, national wildlife areas, and similar areas for the protection of wildlife and wildlife habitat established under federal or territorial legislation except national parks;

"consultation" means

- (a) the provision, to the party to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and
- (c) full and fair consideration by the party obliged to consult of any views presented;

"designated Gwich'in organization" means a Gwich'in organization designated pursuant to chapter 7;

"developer" means any person engaged in development activity;

"development activity" means any private, local, territorial or federal government undertaking, or extension thereof, on land or water;

"development proposal" means a proposed development activity outside local government boundaries, or within such boundaries where the undertaking would be likely to have a significant impact on air, water or renewable resources;

"expropriating authority" means the Government of Canada or the Government of the Northwest Territories or any other authority authorized by statute to expropriate land or an interest in land;

"expropriation" means the compulsory taking of lands or any interest in land;

"forest conservation" means the management of forest resources to ensure the maintenance of the quality and diversity, including the long-term optimum productivity of those resources, and to ensure a sustainable harvest and its efficient utilization;

"forest management" includes forest conservation, forest firefighting, timber management, reforestation and silviculture;

"fur bearers" means the following species endemic to the settlement area: Castor including beaver; Alopex including white fox or arctic fox; Lutra including otter; Lynx including lynx; Martes including martens and fishers; Mephitis including skunk; Mustela including weasel and mink; Ondatra including muskrat; Vulpes including red, cross, black and silver fox; Gulo including wolverine; Canis including wolves and coyotes; Marmota including marmots; Tamiasciurus including red squirrels;

"gas" means natural gas and includes all substances, other than oil, that are produced in association with natural gas;

"government" means

- (a) the Government of Canada,
- (b) the Government of the Northwest Territories or its successor or successors, or
- (c) both,

depending upon which government or governments have responsibility, from time to time, for the matter in question, and this term shall include departments, agencies or officials duly authorized to act on behalf of the bodies named above;

"Gwich'in" means, except in chapters 3 and 4, participants and Gwich'in organizations designated pursuant to chapter 7, as the context requires;

"Gwich'in community" means the community of Inuvik, Aklavik, Arctic Red River or Fort McPherson;

"Gwich'in lands" means Gwich'in municipal lands and settlement lands;

"Gwich'in municipal lands" means Gwich'in lands within local government boundaries granted pursuant to 22.2.1;

"harvesting" means gathering, hunting, trapping or fishing in accordance with this agreement or applicable legislation;

"impact on the environment" includes effects on air, land and water quality, on wildlife and wildlife harvesting, on the social and cultural environment and on heritage resources;

"legal survey" means the determination of all the monuments or landmarks that mark a boundary and the survey of all the lines constituting the boundary. It includes the preparation of field notes and plans and any examination, approval or confirmation that may be required of the

Surveyor General and other officers under the provisions of the *Canada Lands Survey Act*, R.S. 1985, c. L-6, or other statutory authority;

"legislation" means federal or territorial legislation in force from time to time and includes regulations, and any reference to a specific act means that act as amended from time to time, and successor legislation;

"local government" means all incorporated cities, towns, villages, hamlets, charter communities, settlements and local governments listed in 22.8.1 and any other local government which is subsequently designated and established pursuant to 22.7.1 and includes the Government of the Northwest Territories when it acts in the stead of local government;

"Mackenzie Valley" comprises the area within the Northwest Territories that is bounded on the south by the 60th parallel of latitude excluding the area of Wood Buffalo National Park; on the west by the border between the Northwest Territories and Yukon Territory; on the north by the boundary of the Western Arctic Region; and on the east by the boundary of the settlement area of the Tungavik Federation of Nunavut;

"member of immediate family" means spouse, child, parent, brother or sister;

"migratory game birds" has the same meaning as in the *Migratory Birds Convention Act*, R.S. 1985, c. M-7;

"minerals" means precious and base metals and other, non-living, naturally occurring substances and includes coal and oil and gas;

"Minister" means the Minister of the Government of Canada or the Minister of the Government of the Northwest Territories, as the context requires, responsible for the subject matter referred to;

"minor" means a person who has not yet reached the age of majority as determined from time to time by the Legislative Assembly of the Northwest Territories;

"monument" means any authorized device used by a qualified surveyor to mark a boundary in a legal survey executed under some statutory authority, and includes any ancillary components;

"national park" means lands described in the schedules to the *National Parks Act*, R.S. 1985, c. N-14, that lie within the settlement area;

"natural boundary" means the ordinary high-water mark of water bodies or a well-defined height of land;

"navigable" means with respect to a river, lake or other body of water, capable of navigation by boat or other water craft used for commercial purposes or by members of the public in the settlement area;

"new licence", unless otherwise provided in this agreement, includes a licence where the licensee or effective ownership of the licensee is changed but does not include a renewal to the licensee of an existing licence, or a new licence issued to the licensee to authorize the continuation of activities of the licensee under an expiring licence;

"Norman Wells Proven Area" means the area described in Schedule "A" to the Proven Area Agreement dated July 21, 1944, between Imperial Oil Limited and His Majesty in Right of Canada, as amended and renewed from time to time;

"offset boundary" means a boundary parallel to an existing legal survey, a natural boundary or a right of way at a prescribed perpendicular distance from that boundary;

"oil" means crude oil, regardless of gravity, produced at a wellhead in liquid form and any other hydrocarbons except coal and gas and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of deposits on the surface or subsurface;

"ordinary high-water mark" of a body of water means the limit or edge of its bed and, in the case of non-tidal waters, it may be called "the bank" or "the limit of the bank";

"participant" means a person who is enrolled in the Enrolment Register pursuant to chapter 4;

"plants" means all flora, other than trees, in a wild state;

"protected area" means all areas and locations of land set apart and protected by government in the settlement area including historic parks and sites, national wildlife areas, migratory bird sanctuaries, territorial parks, conservation areas and archaeological sites but does not include national parks;

"Renewable Resources Council" means a Gwich'in Renewable Resources Council described in 12.9;

"resource" means mines and minerals whether solid, liquid or gaseous;

"royalty" means any payment, whether in money or in kind, in respect of production of a resource in, on or under the Mackenzie Valley, including the Norman Wells Proven Area, paid or payable to government as owner of the resource, but does not include any payment for a service, for the issuance of a right or interest or for the granting of an approval or authorization;

"settlement area" comprises the area within the Northwest Territories as described in appendix A to this agreement;

"settlement lands" means Gwich'in lands outside local government boundaries granted pursuant to 18.1.2;

"settlement legislation" means the legislation described in 3.1.4 and "the date of settlement legislation" means the date when the legislation comes into force;

"Surveyor General" means the Surveyor General of Canada Lands appointed in the manner authorized by law or a person authorized by the Minister of Energy, Mines and Resources to carry out any or all of the duties of the Surveyor General;

"territorial park" means lands described in the schedule to the Territorial Park Regulations of the *Territorial Parks Act*, R.S.N.W.T. 1988, c. T-4;

"timber licence" includes a timber permit and forest management agreement;

"trade" means to barter, buy, sell, give or receive;

"tree" means a single-stemmed, perennial woody plant growing to a height of more than eight feet, and which is found in a wild state in the Northwest Territories, including Pinus species including Jack Pine and Lodge Pole Pine; Larix species including Tamarack; Picea species including White Spruce and Black Spruce; Abies species including Alpine Fir; Salix species including Beaked Willow and Pussy Willow; Populus species including Trembling Aspen and Balsam Poplar; Betula species including White Birch, Alaska Birch and Water Birch; Alnus species including Speckled Alder and Mountain Alder; and Prunus species including Choke Cherry and Pin Cherry;

"water" includes ice;

"waterfront lands" means lands from the water's edge to 30.48 metres (approximately 100 feet) inland measured from the ordinary high-water mark;

"Western Arctic Region" means that portion of the Inuvialuit Settlement Region other than the Yukon Territory as defined in the Inuvialuit Final Agreement; and

"wildlife" means all ferae naturae in a wild state including, fish, mammals and birds.

3

GENERAL PROVISIONS

3.1.1

In this chapter,

"Gwich'in" means a person of Gwich'in (also referred to as Loucheux) ancestry who resided in, or used and occupied the settlement area on or before December 31, 1921, or is a descendant of such person.

3.1.2

This agreement shall be a land claim agreement within the meaning of section 35 of the *Constitution Act, 1982*.

3.1.3

- (a) This agreement has been ratified by the Gwich'in and Canada in accordance with the process set out in appendix E.
- (b) Enactment of settlement legislation by Parliament is a condition precedent to the validity of this agreement which shall be effective from the date of settlement legislation and, in the absence of such approval, this agreement is null and void and of no effect.

3.1.4

Canada shall recommend to Parliament that this agreement be approved, given effect and declared valid by legislation.

3.1.5

Nothing in this agreement or in the settlement legislation shall remove from the Gwich'in their identity as aboriginal people of Canada or, subject to 3.1.12 and 3.1.13, affect their ability to participate in or benefit from any existing or future constitutional rights for aboriginal people which may be applicable to them.

3.1.6

Nothing in this agreement shall affect the ability of Gwich'in to participate in and benefit from government programs for status Indians, non-status Indians or Metis, as the case may be. Benefits received under such programs shall be determined by general criteria established from time to time.

3.1.7

Nothing in this agreement shall affect the rights of the Gwich'in as Canadian citizens and they shall continue to be entitled to all the rights and benefits of all other citizens applicable to them from time to time.

3.1.8

Nothing in this agreement shall affect the status under the *Indian Act, R.S. 1985, c. I-5*, of any Gwich'in or of any Indian band in the settlement area.

3.1.9

Gwich'in lands shall be deemed not to be lands reserved for Indians within the meaning of the *Constitution Act, 1867* nor reserves within the meaning of the *Indian Act, R.S. 1985, c. I-5*.

3.1.10

Nothing in this agreement shall prejudice the devolution or transfer of jurisdiction or powers from Canada to the Government of the Northwest Territories.

3.1.11

The parties recognize the historical and cultural importance of Treaty 11 and agree that there shall be annual meetings to affirm this recognition, to make annual treaty payments and to recognize the importance of this agreement.

3.1.12 In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in cede, release and surrender to Her Majesty in Right of Canada all their aboriginal claims, rights, titles and interests, if any, in and to lands and waters anywhere within Canada.

3.1.13 In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in cede, release and surrender to Her Majesty in Right of Canada all their claims, rights or causes of action whether collective or individual which they ever had, now have or may hereafter have under, arising out of or by reason of:

- (a) the obligation in Treaty 11 to set aside reserves, and the Gwich'in hereby acknowledge that no reserves were ever set aside in the settlement area pursuant to this obligation;
- (b) the once and for all obligations in Treaty 11, which the Gwich'in acknowledge have been fulfilled by Her Majesty in Right of Canada, to provide the Indians with
 - (i) a payment of thirty-two dollars to each chief, twenty-two dollars to each headman, and twelve dollars to every other Indian,
 - (ii) medals, flags, copies of the Treaty, and
 - (iii) equipment for hunting, fishing and trapping to the value of fifty dollars for each family;
- (c) the obligation in Treaty 11 to provide the Indians with
 - (i) tools for bands that select a reserve,
 - (ii) such assistance as is deemed necessary for the purpose of following agricultural pursuits, and
 - (iii) suits of clothing for chiefs and headmen;
- (d) the right specified in Treaty 11 of the Indians to pursue their usual vocations of hunting, fishing and trapping, but this right shall only be ceded, released and surrendered
 - (i) within the settlement area, the Western Arctic Region, the treaty area east of the Western Arctic Region and north of the Sahtu Settlement Area, and the Yukon, and
 - (ii) within any other region in which a comprehensive land claim agreement based upon the April 9, 1990 Dene/Metis Comprehensive Land Claim Agreement is concluded and approved by Parliament, provided that the participants under such land claim agreement surrender their treaty rights in respect of hunting, fishing and trapping in the settlement area; and
- (e) any Imperial or Canadian legislation or Order-in-Council or other action of the Governor in Council or Canada in relation to Metis or half-breed scrip or money for scrip.

3.1.14 Canada hereby confirms existing treaty rights arising out of those parts of Treaty 11 which are not surrendered in 3.1.13.

3.1.15 Nothing in this agreement shall be construed to affect:

- (a) any aboriginal or treaty right to self-government which the Gwich'in may have; and
- (b) hunting, trapping or fishing rights under a Natural Resources Transfer Agreement, or under treaty in British Columbia, Alberta, Saskatchewan and Manitoba of any person who is eligible to participate in this agreement.

3.1.16 Nothing in this agreement shall be construed to affect, recognize or provide any rights under section 35 of the *Constitution Act, 1982* for any aboriginal peoples other than the Gwich'in.

3.1.17 In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in agree on their behalf, and on behalf of their heirs, descendants and successors not to assert any cause of action, action for a declaration, claim or demand of whatever kind or nature which they ever had, now have or may hereafter have against Her Majesty in Right of Canada or any province, the government of any territory or any person based on any claim, right, title or interest described in 3.1.13.

3.1.18

- (a) In consideration of the rights and benefits provided to the Gwich'in by this agreement, the Gwich'in Tribal Council and the Gwich'in organizations designated pursuant to chapter 7 and successor organizations or assigns of such organizations hereby agree to indemnify and forever save harmless Her Majesty in Right of Canada from all manner of suits and actions, causes of action, claims, demands, damages, costs or expenses, liability and entitlement, initiated, made or incurred after this agreement, whether known or unknown against Canada which any person who is eligible to participate in this agreement, including any heir, successor or permitted assign of such a person, ever had, now has or may hereafter have against Canada relating to or in any way arising from the claims, rights, titles and interests described in 3.1.13.
- (b) Canada shall vigorously defend any such suit or action, cause of action, claim or demand and shall not compromise or settle any such suit or action, cause of action, claim or demand without the consent of the Gwich'in Tribal Council.
- (c) The Gwich'in shall not be required to pay Canada's costs under (a) and (b).
- (d) For greater certainty, the right to be indemnified set out herein shall not extend to any manner of suit or action, cause of action, claim, demand, damage, cost or expense, liability or entitlement relating to or in any way arising from the failure of Her Majesty in Right of Canada to carry out Her obligations under this agreement.

3.1.19 This agreement may be examined as an aid to interpretation where there is any doubt in respect of the meaning of any legislation implementing the provisions of this agreement.

3.1.20 There shall not be any presumption that doubtful expressions in this agreement be interpreted in favour of government or the Gwich'in.

3.1.21 This agreement shall be the entire agreement and there is no representation, warranty, collateral agreement or condition affecting this agreement except as expressed in it.

3.1.22 Subject to 3.1.23, all federal, territorial and local government laws shall apply to the Gwich'in and to Gwich'in lands.

3.1.23 Where there is any inconsistency or conflict between the settlement legislation or this agreement and the provisions of any law, the settlement legislation or this agreement, as the case may be, shall prevail to the extent of the inconsistency or conflict.

3.1.24 Neither government nor the Gwich'in shall challenge the validity of any provision of this agreement.

3.1.25 Subject to 3.1.18, neither government nor the Gwich'in shall have a claim or cause of action based on a finding that any provision of this agreement is invalid.

3.1.26 If any provision of this agreement is found by a court of competent jurisdiction to be invalid, government and the Gwich'in shall make best efforts to amend this agreement to remedy the invalidity or replace the invalid provision.

3.1.27

- (a) The provisions of this agreement may be amended with the consent of government, as represented by the Governor in Council, and the Gwich'in as represented by the Gwich'in Tribal Council.
- (b) Government shall be entitled to rely on the written decision of the Board of Directors of the Gwich'in Tribal Council as evidence of the consent of the Gwich'in.
- (c) Where any amendment of this agreement would affect the programs or responsibilities of the Government of the Northwest Territories, or would be a matter within its jurisdiction, that amendment may not be made without the consent of the Government of the Northwest Territories as represented by the Executive Council.

3.1.28 Government shall consult with the Gwich'in Tribal Council in the planning of the institutions and the preparation of the settlement legislation and other legislation proposed to implement the provisions of this agreement.

3.1.29 Notwithstanding any other provision of this agreement, government is not required to disclose any information that it is required or entitled to withhold under any act relating to access to information. Where government has a discretion to disclose any information, it shall take into account the objects of this agreement in exercising that discretion.

4 ELIGIBILITY AND ENROLMENT

4.1 DEFINITIONS

4.1.1

In this chapter,

"Gwich'in" means a person:

- (a) of Gwich'in (also referred to as Loucheux) ancestry who resided in, or used and occupied the settlement area on or before December 31, 1921, or is a descendant of such person; or
- (b) who was adopted as a minor, under the laws of any jurisdiction or under any Gwich'in custom, by a person described in (a), or is the descendant of a person so adopted; and

"initial enrolment period" means a period of five years, or such other period as the Gwich'in and Canada agree, commencing upon the date of settlement legislation.

4.2 ELIGIBILITY

4.2.1

A person shall be eligible to be enrolled as a participant if that person is a Canadian citizen and is a Gwich'in.

4.2.2

- (a) Notwithstanding that a person is not eligible to be enrolled by virtue of 4.2.1, that person shall be eligible to be enrolled if that person is a Canadian citizen of aboriginal ancestry, resident in the settlement area, and is accepted by the Gwich'in at any time following the date of settlement legislation.

- (b) "Accepted by the Gwich'in" means that a person was sponsored by a person enrolled pursuant to 4.2.1, and was approved by a process to be determined by the participants resident in the settlement area.

4.2.3

Eligibility is personal; it cannot be transferred or assigned.

4.2.4

The Gwich'in shall bear the responsibility, including the cost, for all votes held for the purpose of accepting persons for enrolment pursuant to 4.2.2.

4.3

NATURE OF ENROLMENT

4.3.1

The Enrolment Board shall enroll any person who is eligible pursuant to 4.2:

- (a) who is not a minor and who applies to the Board to be enrolled; or
- (b) who is a minor and for whom the Board receives an application for enrolment by that person's parent or guardian.

4.3.2 The Enrolment Board shall remove from the Enrolment Register the name of any person:

- (a) who is not a minor and who notifies the Board in writing that that person's name is to be removed from the Register; or
- (b) who is a minor and whose parent or guardian notifies the Board in writing that that minor's name is to be removed from the Register.

4.4

OTHER COMPREHENSIVE LAND CLAIM AGREEMENTS

4.4.1

Notwithstanding 4.2.1, no person who is enrolled pursuant to another comprehensive land claim agreement in Canada may be enrolled pursuant to this agreement, and any person enrolled pursuant to this agreement shall cease to be so enrolled if that person becomes enrolled pursuant to another such agreement.

4.4.2

Notwithstanding 4.4.1, a person who would be eligible to be enrolled pursuant to this agreement but for the fact that that person is enrolled pursuant to another comprehensive land claim agreement in Canada, shall be eligible to be enrolled pursuant to this agreement if that person ceases to be enrolled pursuant to the other comprehensive land claim agreement and elects to be enrolled pursuant to this agreement.

4.4.3

For the purposes of 4.4.1, receipt of monetary benefits pursuant to the Agreement with Respect to Providing Interim Benefits to Yukon Indian Elders between the Government of Canada and the Council for Yukon Indians shall not be considered enrolment pursuant to any other comprehensive land claim agreement.

4.4.4

For the purpose of 4.4, Treaty 11 is not a comprehensive land claim agreement.

4.5

ENROLMENT BOARD

4.5.1 An Enrolment Board shall be established, at the date of settlement legislation, composed of:

- (a) five persons appointed by the Gwich'in including not less than one from each of the Gwich'in communities, whose names appear on the Official Voters List described in 28.3.1; and
- (b) during the initial enrolment period only, two persons appointed by the Minister of Indian Affairs and Northern Development.

4.5.2

The Enrolment Board shall:

- (a) enroll persons who are eligible to be enrolled pursuant to 4.2, and for whom application for enrolment has been received pursuant to 4.3;
- (b) establish an Enrolment Register, and maintain therein a record of all enrolled persons;
- (c) maintain a record of those persons whose applications for enrolment were rejected;
- (d) publish the Enrolment Register at least once a year;

- (e) prepare an annual budget for the operation of the Enrolment Board and present it for review and approval to the Government of Canada;
- (f) prepare and provide application forms and information. Application forms shall provide that an applicant:
 - (i) identify the Gwich'in community with which the applicant wishes to be associated, and
 - (ii) identify whether the applicant is applying to be enrolled pursuant to 4.2.1 or pursuant to 4.2.2;
- (g) determine its own procedures and rules of evidence which shall be in accordance with principles of natural justice;
- (h) notify each applicant whose name has not been entered in the Enrolment Register of the reasons for the decision to refuse enrolment and of that applicant's right to appeal from any decision with respect to enrolment; and
- (i) prepare and provide to each participant proof of enrolment under this agreement.

4.6 APPEAL

- 4.6.1 Any applicant for enrolment whose name has not been entered in the Enrolment Register may appeal such decision by filing a notice of appeal with the Supreme Court of the Northwest Territories.
- 4.6.2 On any such appeal, if the Court finds that the Enrolment Board erred in reaching its decision, the Court may reverse the decision of the Board and direct enrolment or refer the decision back to the Board for reconsideration.

4.7 COSTS

- 4.7.1 (a) The Government of Canada shall pay the reasonable and necessary costs incurred by the Enrolment Board for the initial enrolment period.
- (b) After the initial enrolment period, the Gwich'in shall bear the costs of the Enrolment Board.

4.8 OTHER PROVISIONS

- 4.8.1 Nothing in this agreement shall be construed so as to imply that the Government of Canada has agreed to negotiate with those persons who are eligible to be enrolled pursuant to 4.2.2 on the basis of their being the original inhabitants of the settlement area.
- 4.8.2 Participants enrolled pursuant to 4.2.2 shall have rights equal to those of participants enrolled pursuant to 4.2.1.

4.8.3 Benefits provided under this agreement, unless otherwise specified, shall be held by participants collectively. No individual participant has a right to land, money or other benefits unless specifically provided for in this agreement, or by decision of the participants acting through a designated Gwich'in organization.

4.9 ENROLMENT

4.9.1 The enrolment of participants shall commence after the date of settlement legislation.

5

SELF-GOVERNMENT

5.1.1 Government shall enter into negotiations with the Gwich'in with a view to concluding agreements on self-government appropriate to the unique circumstances of the Gwich'in and in conformity with the Constitution of Canada.

5.1.2 A framework agreement which states the principles, process, schedule and agenda items for negotiation is set out in appendix B.

5.1.3 Government shall recommend to Parliament or the Legislative Assembly of the Northwest Territories, as the case may be, legislation separate from settlement legislation to bring into effect self-government agreements resulting from negotiations pursuant to 5.1.1.

5.1.4 The provisions of self-government agreements shall not be inconsistent with the provisions of settlement legislation or this agreement. Where there is any inconsistency or conflict between the settlement legislation or this agreement and the provisions of any self-government agreement, the settlement legislation or this agreement, as the case may be, shall prevail to the extent of the inconsistency or conflict. The parties may agree to amend either the self-government agreement, the settlement legislation or this agreement in order to resolve any inconsistency or conflict.

5.1.5 Self-government agreements shall not affect the rights of the Gwich'in as Canadian citizens or their entitlement to all the rights and benefits of other citizens applicable to them from time to time.

5.1.6 Subject to 3.1.15(a), self-government rights provided for in self-government agreements and any legislation enacted to implement such agreements shall not be construed, on the basis of this agreement, to be aboriginal or treaty rights within the meaning of section 35 of the *Constitution Act, 1982*.

5.1.7 Nothing in this agreement shall preclude the Gwich'in from acquiring constitutional protection for self-government or for self-government agreements negotiated pursuant to this chapter as may be provided in future constitutional amendments or otherwise.

5.1.8 This agreement shall not be interpreted to preclude the possibility that Gwich'in institutions may acquire additional powers and authority through a process of transfer of further powers and authorities from government.

5.1.9 The objectives of self-government agreements shall be to describe the nature, character and extent of self-government, the relationship between government and Gwich'in institutions and to accommodate Gwich'in self-government within the framework of public government.

5.1.10 Self-government negotiations will address the Gwich'in desire to have self-government exercised as close to the community level as is reasonably possible.

5.1.11 Funding for self-government negotiations shall be according to government policy for self-government negotiations.

5.1.12 Government and the Gwich'in agree that the development of a future constitution for the Northwest Territories is a priority. Government shall give the Gwich'in Tribal Council the opportunity to participate in any constitutional conference or similar process for reform of the constitution of the Northwest Territories.

6

DISPUTE RESOLUTION

6.1

GENERAL

6.1.1

The provisions of this chapter apply to any dispute which is not resolved by discussion and negotiation.

6.1.2

Subject to the provisions of this chapter, the Supreme Court of the Northwest Territories has jurisdiction in respect of any action arising out of this agreement including any application for judicial review in respect of any board established pursuant to this agreement.

6.1.3

The Supreme Court of the Northwest Territories shall have jurisdiction to review a decision of the arbitrator or arbitrators in 6.3.7 on a question of law or jurisdiction.

6.1.4

Except in respect of disputes arbitrated under this chapter, nothing in this chapter limits the jurisdiction of any court.

6.1.5

The panel described in 6.2 shall have jurisdiction to arbitrate in respect of:

- (a) any matter which this agreement stipulates is to be determined by arbitration; and
- (b) any matter concerning the interpretation or application of this agreement where the parties agree to be bound by an arbitration decision in accordance with this chapter.

6.1.6

Where a participant has a right of action in relation to this agreement, the Gwich'in Tribal Council may bring that action on behalf of such participant with the consent of the participant.

6.1.7

Nothing in this chapter shall prevent parties to a dispute from agreeing to refer it to an alternate dispute resolution mechanism such as mediation or arbitration pursuant to the *Arbitration Act*, R.S.N.W.T. 1988, c. A-5.

6.2

ARBITRATION PANEL

6.2.1

(a) An arbitration panel ("the panel") shall be established to resolve disputes in accordance with this agreement.

(b) The panel is established when:

- (i) Canada, as represented by the Minister of Indian Affairs and Northern Development, the Government of the Northwest Territories as represented by the Minister of Justice and the Gwich'in Tribal Council agree in writing that it is established; or
- (ii) Canada and the Government of the Northwest Territories have each appointed at least one member and the Gwich'in Tribal Council has appointed at least two members to the panel,

whichever comes first.

6.2.2

The panel shall have eight members including a chairperson and a vice-chairperson, both of which shall be chosen by a majority of the panel. Subject to 6.3.5, the panel may establish rules and procedures for the implementation of this chapter.

6.2.3

- (a) Canada, the Government of the Northwest Territories and the Gwich'in Tribal Council shall consult and attempt to reach consensus as to the persons to be appointed to the panel.
- (b) If a consensus is not reached under (a) within one year of the date of settlement legislation, Canada and the Government of the Northwest Territories may each appoint two members and the Gwich'in Tribal Council may appoint four members.
- (c) The term of appointment shall be five years.

6.2.4

Upon the departure of a panel member from the panel, the party which appointed the departing member may appoint a new member to the panel and, where the departing member was jointly appointed, Canada, the Government of the Northwest Territories and the Gwich'in Tribal Council shall consult and attempt to reach consensus as to the appointment of the new member.

6.2.5

A quorum of the panel shall be four members, which in the case of a panel appointed under 6.2.3(b) shall consist of one member appointed by each of Canada and the Government of the Northwest Territories and two members appointed by the Gwich'in Tribal Council.

6.2.6

Any staff of the panel shall be provided by government. The panel shall prepare an annual budget, subject to review and approval by government. The approved expenses of the panel shall be a charge on government.

6.2.7

Appointments by Canada under this chapter shall be made by the Minister of Indian Affairs and Northern Development. Appointments by the Government of the Northwest Territories shall be made by its Minister of Justice.

6.3

PROCEDURE FOR ARBITRATION

6.3.1

A dispute shall be arbitrated by:

- (a) one arbitrator drawn from the panel if agreed to by the parties to the arbitration; or
- (b) three arbitrators drawn from the panel, one of whom shall be appointed by the party making the submission to arbitration, one by the other party to the submission and the third to be selected by the two appointed arbitrators from the other members of the panel. Failing agreement, the third arbitrator shall be appointed by a judge pursuant to the *Arbitration Act*, R.S.N.W.T 1988, c. A-5, who shall not be restricted to members of the panel when making such appointment.
- (c) Unless otherwise agreed, arbitrators shall be selected from the panel.

6.3.2

An arbitration, in respect of any matter referred to in 6.1.5(a), shall be convened by a submission to arbitration filed with the panel by any person having a right to arbitration under this agreement. The submission shall name the other party to the dispute, set out the nature of the dispute, a summary of the facts, describe the issue to be arbitrated, name an arbitrator from the panel and describe the relief sought.

6.3.3 In the case of an arbitration convened pursuant to **6.3.2**, the other party to the dispute shall file a reply within 30 days responding to the submission, agreeing to the arbitrator named in the submission or naming another arbitrator from the panel and describing any relief sought. Where the other party to the dispute fails to file a reply within the prescribed time, that party shall be deemed to have agreed to the arbitrator named in the submission and shall be deemed to be a party to the arbitration.

6.3.4

- (a) The Gwich'in Tribal Council, Canada or the Government of the Northwest Territories may participate in any arbitration as a party on notice to the arbitrator or arbitrators.
- (b) The arbitrator or arbitrators shall allow any other person, on application and on such terms as the arbitrator or arbitrators in their discretion may order, to participate in an arbitration if in the opinion of the arbitrator or arbitrators the interest of that person may be affected by the arbitration.

6.3.5 The arbitrator or arbitrators shall have jurisdiction, after hearing the parties, to determine all questions of procedure, including the method of giving evidence, and to make an award, including interim relief, payment of interest and costs in accordance with this agreement.

6.3.6 It is intended that the process of arbitration will resolve disputes submitted to it in an expeditious and, where appropriate, informal manner.

6.3.7 The decision of the arbitrator or arbitrators shall be conclusive and binding on the parties to the arbitration and shall not be challenged by appeal or review in any court except on the ground that the arbitrator or arbitrators have erred in law or exceeded their jurisdiction.

6.3.8 If the arbitrator or arbitrators make no decision as to costs, each party to an arbitration shall bear its own costs and an equal share of the other costs of the arbitration including the remuneration and expenses of the arbitrator or arbitrators.

6.3.9 The *Arbitration Act*, R.S.N.W.T. 1988, c. A-5, shall apply to any arbitration to the extent not inconsistent with this chapter.

6.3.10 A public file of arbitration decisions shall be maintained by the panel unless the parties to the arbitration agree that the proceedings, including the decision, shall remain confidential.

6.4 **TRANSITIONAL**

6.4.1 Until an arbitration panel is established, the *Arbitration Act*, R.S.N.W.T. 1988, c. A-5, applies to any arbitration described in **6.1.5**.

7

GWICH'IN ORGANIZATIONS

7.1.1 All rights exercisable by a designated Gwich'in organization and all obligations to which a designated Gwich'in organization is subject shall be assigned by the Gwich'in Tribal Council prior to the date of settlement legislation to one or more designated Gwich'in organizations. Such rights and obligations may be reassigned by the Gwich'in Tribal Council from time to time provided that such reassignments shall not adversely affect the exercise of rights or the performance of obligations contemplated in this agreement.

7.1.2 Designated Gwich'in organizations shall be trusts, societies or corporations established pursuant to federal or territorial legislation.

7.1.3

- (a) Designated Gwich'in organizations administering land or capital assets transferred pursuant to **8.1.1**, **9.1.2** or **18.1.2** shall be structured such that:
 - (i) all participants have an equal interest therein as at the date of settlement legislation; and
 - (ii) such organizations shall be owned and controlled by participants and membership or shareholdings shall be non-transferable.
- (b) Any subsequent restructuring of such organizations shall respect the principle of maintaining an equal interest of participants, either at the regional or community level, in respect of land and capital assets.

7.1.4 Designated Gwich'in organizations exercising rights pursuant to this agreement shall be open to membership by all participants who are not minors and who are affected by the exercise of such rights.

7.1.5 Nothing in this chapter is intended to prevent participation by the Gwich'in in corporations or other forms of business organization in which other persons are shareholders or have an interest by using the capital assets transferred under this agreement.

7.1.6

- (a) Prior to the date of settlement legislation, the Gwich'in Tribal Council may designate a Gwich'in organization or organizations to receive capital transfers pursuant to **8.1.1**, amounts payable to the Gwich'in pursuant to **9.1.2** and any other payments pursuant to this agreement.
- (b) The Gwich'in may later designate other Gwich'in organizations to receive payments provided the principles expressed in 7.1.3 are observed.

7.1.7 Canada is authorized to make:

- (a) capital transfers pursuant to **8.1.1** and payments pursuant to **9.1.2** to duly authorized organizations designated pursuant to 7.1.6, and
- (b) transfers of land to the Gwich'in Tribal Council pursuant to **18.1**,

and shall be deemed to have fully discharged its obligations in respect of such payments and transfers upon receipt of such by the Gwich'in Tribal Council or the organizations designated pursuant to 7.1.6.

7.1.8 The Gwich'in Tribal Council shall cause to be established, prior to the date of settlement legislation, and shall thereafter maintain, a public register of designated Gwich'in organizations, which register shall identify all rights and obligations assigned pursuant to 7.1.1 to designated Gwich'in organizations.

7.1.9 Government shall not be liable to participants for any damage or loss suffered by participants as a result of the failure of any designated Gwich'in organization to comply with an obligation under this agreement.

8

FINANCIAL PAYMENTS

8.1

CAPITAL TRANSFER

8.1.1

Canada shall make a capital transfer to the Gwich'in Tribal Council in accordance with the schedule of payments as set forth in schedule I to this chapter.

8.1.2

Canada is discharged from all undertakings and obligations, if any, to the Gwich'in in respect of the Norman Wells Proven Area described in schedule A to the Proven Area Agreement dated July 21, 1944 between Imperial Oil Limited and His Majesty in Right of Canada, as amended and renewed from time to time.

8.2

NEGOTIATION LOAN REPAYMENT

8.2.1

The Gwich'in Tribal Council shall repay their negotiation loans and shall pay 15 percent of the negotiation loans incurred by the Dene Nation and the Metis Association of the Northwest Territories between 1975 and November 7, 1990 as provided in schedule II to this chapter.

8.2.2

Canada may set off and deduct from payments to be made pursuant to **8.1.1** the amounts of repayment of the negotiation loans under **8.2.1** to be made at the time of such payments.

8.2.3

In all other respects, any other terms and conditions of the negotiation loans shall be unaffected.

8.3

LOANS AGAINST CAPITAL TRANSFER

8.3.1

At any time after three years from the date of settlement legislation the Gwich'in Tribal Council may request a loan from Canada against the then unpaid balance of the capital transfer.

8.3.2

Canada, as represented by the Minister of Finance, may decide, at its discretion, whether to grant a request, pursuant to **8.3.1**, for a loan. The Minister may negotiate the terms and conditions of a loan subject to the requirement that:

- (a) the Gwich'in Tribal Council shall pay, at the time of the loan, an amount on any outstanding balance of negotiation loans described in **8.2.1** which will reduce the outstanding balance of those loans by the same proportion as the amount loaned under **8.3.2** bears to the unpaid balance of the capital transfer in **8.1.1**;
- (b) the amount paid by the Gwich'in Tribal Council in (a) shall be credited to the last payments of the schedule described in **8.2.1**;
- (c) the unpaid balance of the capital transfer in any year is greater than or equal to the total of all outstanding administrative fees, if any, loan repayments and interest payable by the Gwich'in Tribal Council; and
- (d) Canada may deduct any loan repayments due from the Gwich'in Tribal Council from payments due to the Gwich'in Tribal Council pursuant to **8.1.1**.

SCHEDULE OF PAYMENTS

<u>Date</u>	<u>Payment</u>
Advance Payment - date of signing this agreement	\$2,000,000.00
Date of settlement legislation	*\$7,000,000.00
First Anniversary of date of this agreement	\$4,180,680.28
Second Anniversary of date of this agreement	\$6,271,020.43
Third Anniversary of date of this agreement	\$8,361,360.57
Fourth Anniversary of date of this agreement	\$10,451,700.71
Fifth Anniversary of date of this agreement	\$10,451,700.71
Sixth Anniversary of date of this agreement	\$10,451,700.71
Seventh Anniversary of date of this agreement	\$10,451,700.71
Eighth Anniversary of date of this agreement	\$10,451,700.71
Ninth Anniversary of date of this agreement	\$10,451,700.71
Tenth Anniversary of date of this agreement	\$10,451,700.71
Eleventh Anniversary of date of this agreement	\$10,451,700.71
Twelfth Anniversary of date of this agreement	\$10,451,700.71
Thirteenth Anniversary of date of this agreement	\$8,361,360.57
Fourteenth Anniversary of date of this agreement	\$6,271,020.43
Fifteenth Anniversary of date of this agreement	\$4,180,680.28

* This amount shall bear interest at the rate of 9.12 percent compounded annually from April 23, 1992 to the date of payment. Such amount shall be paid as soon as possible after the date of settlement legislation.

OUTSTANDING BALANCE OF NEGOTIATION LOANS

\$8,145,172.40 TOTAL

First Payment	\$906,292.34	on the third anniversary of date of this agreement
Second Payment	\$1,132,865.43	on the fourth anniversary of date of this agreement
Third Payment	\$1,132,865.43	on the fifth anniversary of date of this agreement
Fourth Payment	\$1,132,865.43	on the sixth anniversary of date of this agreement
Fifth Payment	\$1,132,865.43	on the seventh anniversary of date of this agreement
Sixth Payment	\$1,132,865.43	on the eighth anniversary of date of this agreement
Seventh Payment	\$1,132,865.43	on the ninth anniversary of date of this agreement
Eighth Payment	\$1,132,865.43	on the tenth anniversary of date of this agreement
Ninth Payment	\$1,132,865.43	on the eleventh anniversary of date of this agreement
Tenth Payment	\$1,132,865.43	on the twelfth anniversary of date of this agreement
Eleventh Payment	\$906,292.34	on the thirteenth anniversary of date of this agreement
Twelfth Payment	\$679,719.26	on the fourteenth anniversary of date of this agreement
Thirteenth Payment	\$453,146.17	on the fifteenth anniversary of date of this agreement

9

RESOURCE ROYALTIES

9.1.1 Government shall pay to the Gwich'in Tribal Council, annually, an amount equal to:

- (a) 7.5 percent of the first \$2.0 million of resource royalty received by government in that year; and
- (b) 1.5 percent of any additional resource royalties received by government in that year.

9.1.2 (a) Amounts payable by government pursuant to this chapter shall be calculated on the basis of amounts due to and received by government in respect of resources produced after the date of this agreement.

(b) Payments remitted to the Gwich'in Tribal Council shall be in quarterly instalments.

(c) Government shall annually provide to the Gwich'in Tribal Council a statement indicating the basis on which royalties were calculated for the preceding year.

(d) On the request of the Gwich'in Tribal Council, government shall request the Auditor General to verify the accuracy of the information in the annual statements.

9.1.3 (a) Subject to (b), government shall consult with the Gwich'in Tribal Council on any proposal specifically to alter by legislation the resource royalty payable to government.

(b) Where government consults outside government on any proposed changes to the fiscal regime which will affect the resource royalty payable to government, it shall also consult with the Gwich'in Tribal Council.

10

ECONOMIC MEASURES

10.1.1

Government economic development programs in the settlement area shall take into account the following objectives:

- (a) that the traditional Gwich'in economy should be maintained and strengthened; and
- (b) that the Gwich'in should be economically self-sufficient.

10.1.2

To achieve the objectives in 10.1.1, government shall take such measures as it considers reasonable, in light of its fiscal responsibility and economic objectives, including:

- (a) support of the traditional Gwich'in economy and individual harvesters and promotion of the marketing of renewable resource products and native manufactured goods;
- (b) assistance in the development of commercially viable Gwich'in businesses and enterprises, and when necessary, identification of possible sources of financial assistance;
- (c) provision of business and economic training and educational assistance to the Gwich'in so that they may be able to participate more effectively in the northern economy; and
- (d) encouragement of the employment of Gwich'in in the settlement area, including employment in major projects and developments, in the public service and public agencies. Accordingly, government shall prepare plans for the training and employment of Gwich'in, including the development of measures to recognize the special need of the Gwich'in for pre-employment training in basic skills. Government shall review job qualifications and recruitment procedures to remove inappropriate requirements in respect of cultural factors, experience or education.

10.1.3

- (a) Where government proposes economic development programs related to the objectives in 10.1.1, government shall consult with the Gwich'in Tribal Council.
- (b) Government shall meet with the Gwich'in Tribal Council not less than once every three years to review the effectiveness of programs relating to the objectives in 10.1.1.

10.1.4

Where government carries out public activities in the settlement area which give rise to employment or other economic opportunities and government elects to enter into contracts with respect to those activities:

- (a) the Government of Canada contracting procedures and approaches intended to maximize local and regional employment and business opportunities, including the provision of opportunities for potential contractors to become familiar with bidding systems, or
- (b) the Government of the Northwest Territories preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities

shall be followed respectively by Canada or the Government of the Northwest Territories.

10.1.5 The Government of the Northwest Territories shall consult with the Gwich'in Tribal Council when developing modifications to its preferential contracting policies, procedures and approaches.

10.1.6 When the Government of the Northwest Territories intends to carry out activities on settlement lands which give rise to employment or other economic opportunities, and when the Government of the Northwest Territories elects to enter into contracts with respect to those activities without going to public tender, participants shall be given the first opportunity to negotiate such contracts, provided they satisfy all criteria including any qualifications particular to the contract and price. Should negotiations not conclude in a contract or contracts in a timely fashion, the contract or contracts shall go to public tender and Gwich'in shall be permitted to bid on the same basis as other northerners.

10.1.7 The provisions of this chapter are intended to be implemented through programs and policies which are in place from time to time without imposing any additional financial obligation on government.

11 TAXATION

11.1 DEFINITIONS

11.1.1 In this chapter,

"Tax Act" shall mean the *Income Tax Act*, R.S. 1970-71-72, c. 63, and the *Income Tax Act*, R.S.N.W.T. 1988, c. I-1;

"federal Tax Act" shall mean the *Income Tax Act*, R.S. 1970-71-72, c. 63;

"real property taxation" shall mean all local government tax and taxes on real property but, for greater certainty, does not include any tax levied pursuant to the Tax Act, tax on goods and services, sales tax or tax on transfer of property;

"settlement corporation" shall mean a corporation described in 11.3.1; and

"Minister" shall mean the Minister of National Revenue.

11.2 CAPITAL PAYMENTS

11.2.1 There shall be no federal, territorial or local government tax or other similar charge exigible in respect of, or reduction to the cost or capital cost of, property acquired as a result of the receipt by a designated Gwich'in organization of, or the receipt by a settlement corporation that may reasonably be considered to be a receipt of, amounts that are:

- (a) capital transfer payments described in chapter 8;
- (b) payments made to all designated Gwich'in organizations and settlement corporations described in chapter 9, to the extent that such payments do not exceed in aggregate \$3.0 million; and
- (c) loans described in 8.3.

11.2.2 Except as provided in this chapter, any income earned on an amount described in 11.2.1(a), (b) or (c) received by a person other than a settlement corporation shall be subject to federal, territorial or local government tax or other similar charges as may be exigible under legislation.

11.3 SETTLEMENT CORPORATIONS

11.3.1 A settlement corporation means a non-share capital corporation that:

- (a) is incorporated by the Gwich'in, is resident in Canada and is operated all or substantially all for the general benefit of participants;
- (b) devotes all or substantially all of its resources to making the investments described in 11.3.3 and to carrying on its permitted activities as described in schedule I to this chapter;
- (c) qualifies as a designated Gwich'in organization, as described in chapter 7;

- (d) has received no contributions of capital or other amounts, except as described in 11.2.1 or as a transfer of capital from another settlement corporation;
- (e) has given to the Minister an election (i) to be a settlement corporation and (ii) to be subject to the special rules applicable to a settlement corporation, as provided in this chapter, with the first tax return that it is required to file with the Minister; and
- (f) has not had its status as a settlement corporation terminated pursuant to 11.3.7.

Disbursement Requirements

11.3.2

A settlement corporation shall be subject to the disbursement rules, including the disbursement excess rules, applicable to "public foundations" under the federal Tax Act, with such modifications as are required, provided that such rules shall not apply to a settlement corporation or its disbursements until the first day of the taxation year of the corporation commencing after the end of a period of 15 years commencing on the day of payment of the first capital transfer payment described in chapter 8. For this purpose, any loans made by the settlement corporation pursuant to schedule I to this chapter shall be treated as disbursements, the relevant provisions of the federal Tax Act shall apply as if the permitted activities described in schedule I to this chapter were charitable activities and the persons to whom payments or loans are made by the settlement corporation in the course of carrying on these permitted activities shall be treated as qualified donees.

Permitted Activities and Qualified Investments

11.3.3

- (a) A settlement corporation shall restrict its investments to those made in the course of carrying on activities permitted under schedule I to this chapter and those described in schedule II to this chapter, as that latter schedule is amended from time to time by agreement among the Gwich'in Tribal Council, the Minister of Finance of Canada and the Government of the Northwest Territories, except that
 - (b) a settlement corporation, either alone or as part of a group that includes another settlement corporation, shall not control directly or indirectly in any manner whatever a corporation, partnership or other entity that carries on a business or whose principal activity is the making of investments.
 - (c) A settlement corporation may borrow money from time to time in order to finance its permitted activities and its qualified investments and the settlement corporation may repay the borrowed money and interest thereon.
 - (d) For the purposes of 11.3.3(b), another settlement corporation shall mean a settlement corporation as defined in 11.3.1 or any settlement corporation or like entity created pursuant to any comprehensive land claim agreement in Canada.

(e) A settlement corporation shall not acquire an interest in a partnership or trust other than a small business investment limited partnership or a small business investment trust as defined in the federal Tax Act unless it is to realize on a security held by the settlement corporation, in which case its interest shall be disposed of within a reasonable period not to exceed six months. A settlement corporation shall not provide any loans to a partnership or a trust other than a small business investment limited partnership or a small business investment trust as defined in the federal Tax Act unless the loan is provided in the course of carrying on a permitted activity under schedule I to this chapter.

Taxation of Settlement Corporations

11.3.4 Except as provided in this chapter, there shall be no federal, territorial or local government tax or other similar charges exigible from a settlement corporation save and except federal goods and services tax. For greater certainty, a settlement corporation shall not be subject to federal large corporations or other capital taxes.

11.3.5 (a) A settlement corporation shall be liable to pay tax for a taxation year, determined as if its taxable income for the year was an amount equal to the aggregate of the following amounts:

- (i) the amount of any income derived by it from property during the year including, for greater certainty, the income or the taxable portion of any capital gain realized on the disposition of the property, other than property that is a qualified investment of the settlement corporation as described in 11.3.3 or that is property acquired by the settlement corporation in the course of carrying on its permitted activities as described in schedule I to this chapter;
- (ii) any amounts contributed or otherwise paid to the settlement corporation during the year, other than amounts;
 - (A) described in 11.2.1 or as a transfer of capital from another settlement corporation; or
 - (B) otherwise included in computing its taxable income for the year under 11.3.5(a)(i) or (iii);
- (iii) amounts described in 11.3.5(b), 11.3.7(c) or 11.3.8; and
- (iv) any amounts paid by the settlement corporation during the year that are exempt from taxation in the hands of the recipient by virtue of subparagraph 81(1)(a) of the federal Tax Act or paragraph 87(b) of the *Indian Act*, R.S. 1985, c. I-5, other than any amounts that are exempt from taxation in the hands of the recipient by virtue of this agreement or settlement legislation.

(b) For the purposes of 11.3.5(a), if a settlement corporation makes any payment, whether by distribution, disbursement, loan or otherwise, and the payment:

- (i) is not an investment described in 11.3.3, is not made in the course of carrying on its permitted activities described in schedule I to this chapter and
- (ii) where it is reasonable to believe that such payment was inadvertently made, the payment is made at least five years after the date of settlement legislation,

an amount equal to the amount of the payment, divided by (1-A), shall be deemed to be an amount referred to in 11.3.5(a)(iii) for the year in which the payment was made, where A is the aggregate of the federal and the Northwest Territories tax rates applicable to public corporations for that year before deducting the territorial abatement, plus any surtaxes to which public corporations may be liable for the year.

(c) The tax payable by a settlement corporation upon its taxable income for a taxation year provided in 11.3.5(a) shall be that percentage of its taxable income that is the maximum federal and Northwest Territories tax rate applicable to a public corporation for the year, plus any surtaxes to which public corporations may be liable for the year, and shall be determined without any deduction.

11.3.6

A settlement corporation shall be liable to pay the tax under part XI of the federal Tax Act, including the penalty tax payable on excess foreign property, as if that part were stated to be applicable to settlement corporations, with such modifications as are required.

Termination of Settlement Corporation Status

11.3.7

(a) A settlement corporation may revoke its election made under 11.3.1(e) effective as of a date determined by the settlement corporation (the "revocation date") provided that:

- (i) the settlement corporation shall give written notice to the Minister of National Revenue of its intention to revoke its election, and
- (ii) the date of such notice shall be not less than 60 days prior to the revocation date.

Upon receipt of such notice, the Minister of National Revenue shall terminate the status of the corporation as a settlement corporation effective as of the revocation date or, where the revocation date is less than 60 days prior to the date of such notice, as of the day which is 60 days after the date of such notice. For the purposes of this 11.3.7 (a), the date of any notice shall be the day of mailing of such notice.

(b) Where the Minister is of the opinion that a settlement corporation has failed to comply with any provision in this chapter or has failed to meet the requirements set out in 11.3.1(a) through (e), the Minister may notify the settlement corporation in writing and if the settlement corporation does not redress the default to the satisfaction of the Minister within 100 days after the registered mailing of such notice, the Minister may terminate the status of the corporation as a settlement corporation, subject to the same

right of appeal as that applicable in respect of a revocation of the registration of a registered charity as set out in the federal Tax Act.

(c) If the Minister terminates the status of a settlement corporation pursuant to 11.3.7(a) or (b), the taxation year of the settlement corporation that would otherwise have included the time of termination shall be deemed to end immediately before that time and the settlement corporation shall be deemed to have disposed of all its assets immediately before the time that is immediately before the time of termination for proceeds of disposition equal to the fair market value thereof at that time and to have reacquired such assets immediately after the time of termination at a cost equal to such fair market value and, for the purpose of 11.3.5, an amount equal to the amount by which such fair market value exceeds the aggregate of:

- (i) amounts that may reasonably be considered to have been otherwise included in computing the taxable income of the settlement corporation in a taxation year under 11.3.5, and
- (ii) amounts that may reasonably be considered to be a portion of the total payments described in 11.2.1(a), (b) or (c) that were paid directly to the settlement corporation or to a designated Gwich'in organization and that were contributed by such organization to the settlement corporation or are deemed to be so contributed by virtue of 11.3.10,

shall be deemed to be an amount referred to in 11.3.5(a)(iii) for that taxation year.

(d) For greater certainty and for the purposes of 11.3.7:

- (i) the distribution by a settlement corporation to participants of any amount that may reasonably be considered to be payments referred to in 11.2.1(a), (b) or (c) shall not be considered a cause for the termination by the Minister of the status of a settlement corporation; and
- (ii) subject to 11.3.7(d)(i), any failure of the settlement corporation to devote its resources in accordance with the requirements of 11.3.1(a) through (e) may be considered cause for the termination by the Minister of the status of the settlement corporation pursuant to 11.3.7(b).

Winding-Up

11.3.8 Where a settlement corporation commences to be wound-up or liquidated or commences proceedings to be granted articles of continuance or similar corporate constitutional documents in a jurisdiction outside Canada, the taxation year of the settlement corporation that otherwise would have included the time of such commencement shall be deemed to end immediately before that time and the amount distributed on the winding-up, liquidation or, in the case of continuance outside Canada, the fair market value of the total assets of the corporation, less the aggregate of:

(a) the amount disbursed or expended in the course of the winding-up or liquidation on its permitted activities as described in schedule I to this chapter;

- (b) all amounts that may reasonably be considered to be amounts described in 11.2.1(a), (b) or (c) that were received by the settlement corporation and which are transferred to a designated Gwich'in organization which complies with the requirements of 7.1.2 and 7.1.3 or to another settlement corporation; and
- (c) all other amounts transferred to another settlement corporation;

shall be deemed to be an amount that is referred to in 11.3.5(a)(iii) for that taxation year.

Taxation of Participants or Designated Gwich'in Organizations

11.3.9 Subject to 11.3.11, there shall be no federal, territorial or local government tax or other similar charge payable by a participant, a designated Gwich'in organization or a corporation controlled, directly or indirectly in any manner whatever, by one or more participants or designated Gwich'in organizations, on amounts disbursed or distributed to a participant, designated Gwich'in organization or such corporation in accordance with schedule I to this chapter (except for paragraphs 10 and 12(d) of schedule I to this chapter), other than amounts disbursed or distributed to a participant, designated Gwich'in organization or such corporation as consideration for value provided to the settlement corporation by that participant, designated Gwich'in organization or corporation.

11.3.10 For the purposes of this chapter, where a particular property is disbursed or distributed by one settlement corporation (the "transferor" in 11.3.10) to one or more settlement corporations (the "transferee" in 11.3.10), the transferor and the transferee shall each file a copy of a joint designation with their tax returns for the year in which the transfer occurred designating an amount, if any, of the property so transferred, and any amount so designated shall, in applying the provisions of this chapter, including without limitation 11.3.10, be deemed thereafter to be a contribution described in 11.2.1(a) received by the transferee and not to be a contribution described in 11.2.1(a) or (b) received by the transferor, provided that the total of such amounts so designated shall not exceed the contributions described in 11.2.1(a) and (b) received by the transferor or deemed by virtue of 11.3.10 to be so received, at any time before the disbursement or distribution of the particular property.

11.3.11 (a) Where a settlement corporation has transferred or loaned property directly or indirectly or by means of a trust or by any other means whatever, to one or more settlement corporations or any other person or partnership, and one of the main purposes of the loan or transfer may reasonably be considered, but for this provision, to avoid the payment of a tax liability of the settlement corporation pursuant to this chapter:

- (i) the transferor and the transferee are jointly and severally liable to pay a part of the transferor's tax under this chapter for each taxation year equal to the amount of the tax in respect of any income from, or gain from the disposition of, the property so transferred or loaned, or property substituted therefor, and
- (ii) the transferor and transferee are jointly and severally liable to pay under the federal Tax Act an amount equal to the lesser of
 - (A) the amount if any by which the fair market value of the property at the time it was transferred or loaned exceeds the fair market value at that time of the consideration given for the property, and

(B) the aggregate of all amounts each of which is an amount that the transferor is liable to pay under the federal Tax Act or this chapter in or in respect of the taxation year in which the property was transferred or loaned or in any preceding taxation year,

but nothing in 11.3.11 shall be deemed to limit the liability of the transferor under any other provision of the federal Tax Act or this chapter.

(b) The Minister may at any time assess a transferee in respect of any amount payable by virtue of 11.3.11(a) and the provisions of part I of the federal Tax Act are applicable with such modifications as the circumstances require in respect of an assessment made under 11.3.11(a) as though it had been made under section 152 of the federal Tax Act.

(c) Where a transferor and transferee have, by virtue of 11.3.11(a), become jointly and severally liable in respect of part or all of a liability of the transferor under this chapter, the following rules are applicable:

(i) a payment by the transferee on account of the transferee's liability shall to the extent thereof discharge the joint liability; but

(ii) a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, by 11.3.11(a), made jointly and severally liable.

(d) Notwithstanding 11.3.11(a) to (c), 11.3.11(a) to (c) are not applicable to a transfer or loan unless the Minister has, within two years of the end of the taxation year in which a particular transfer or loan was made, given written notice to the transferor and transferee that the Minister intends to apply 11.3.11(a) to (c) to the particular transfer or loan.

11.4

SETTLEMENT LANDS AND DEPRECIABLE PROPERTY

Acquisition

11.4.1

The cost of acquisition to a participant or to a designated Gwich'in organization of any real property acquired under this agreement, other than depreciable property, transferred to the participant or designated Gwich'in organization by the Government of Canada pursuant to this agreement shall, for the purposes of the Tax Act, be deemed to be an amount equal to the fair market value thereof at the earlier of the time that title to such property is registered in the name of the participant or such organization and the time that any right or interest in such property is acquired by the participant or such organization.

Disposition

11.4.2

Where any real property acquired under this agreement, other than depreciable property, is disposed of by a designated Gwich'in organization (the "transferor" in 11.4.2):

- (a) to a participant (the "transferee" in 11.4.2), and such real property has not previously been disposed of by a designated Gwich'in organization to another participant; or
- (b) to another designated Gwich'in organization (also a "transferee" in 11.4.2) within 10 years of the transfer by the Government of Canada of such property pursuant to this agreement to the designated Gwich'in organization;

the real property shall, for the purposes of the Tax Act, be deemed to have been disposed of by the transferor for proceeds of disposition equal to the greater of the amount that would otherwise be the proceeds of disposition and the adjusted cost base to the transferor of the real property at that time and to have been acquired by the transferee at a cost equal to the amount at which it was deemed to have been disposed of.

Depreciable Property

11.4.3

The rules of 11.4.2 shall apply to depreciable property with such modifications as are required.

Taxes on Transfer of Lands

11.4.4

- (a) No federal, territorial or local government charge, levy or tax shall be payable in respect of the transfer to or receipt by the Gwich'in Tribal Council of Gwich'in lands at the date of settlement legislation.
- (b) No federal, territorial or local government charge, levy or tax shall be payable by the Gwich'in in respect of any subsequent transfer of settlement lands by the Gwich'in Tribal Council to a designated Gwich'in organization within five years from the date of settlement legislation.
- (c) Where a transfer is made to which 11.4.2(b) applies, no federal goods and services tax shall be payable in respect of such transfer.

11.5

REAL PROPERTY TAXATION OF SETTLEMENT LANDS

11.5.1

- (a) Unimproved settlement lands shall be exempt from real property taxation. Improvements which are used primarily for non-commercial wildlife harvesting or other traditional purposes, including single-family residences, cabins, camps and tent frames, shall be exempt from real property taxation and shall not be considered improvements for the purposes of the assessment of real property taxation.
- (b) In (a), "non-commercial wildlife harvesting" means wildlife harvesting which does not require authorization from the Renewable Resources Board pursuant to 12.7.1(a).

11.5.2

Subject to 11.5.1(a), settlement lands are subject to real property taxation under applicable legislation.

11.5.3 Notwithstanding 11.5.1(a), settlement lands that are leased or occupied by a person who is not a participant are subject to real property taxation under applicable legislation.

11.5.4 Should a participant or other person who occupies settlement lands fail to pay real property taxes levied against such participant or other person in respect of such lands and such taxes are in arrears for a period of one year or more, the designated Gwich'in organization which holds title to the lands shall be liable to pay, upon notice from the applicable government, such taxes within a reasonable period of time as may be determined by such government from time to time.

11.6 ADMINISTRATION AND ENFORCEMENT

11.6.1 The Minister shall be responsible for the administration and enforcement of the provisions of this agreement that relate to income taxation, goods and services taxation and regulation of qualified investments and to that end may seek the advice of the Minister of Indian Affairs and Northern Development with respect to any matter arising out of these provisions.

11.6.2 Every settlement corporation shall produce every year a report in a form acceptable to the Minister from a public accountant who has audited the settlement corporation providing the Minister with the information required to administer the provisions of this chapter.

11.6.3 Any tax or other amounts payable by a settlement corporation as provided in this chapter shall be considered to be tax or an amount payable under the Tax Act and, for greater certainty, the penalty, interest and administrative provisions of the Tax Act shall apply, with such modifications as are required, to any such tax or other amount.

11.7 IMPLEMENTATION AND INTERPRETATION

11.7.1 The Tax Act may be amended to provide for the implementation of this chapter.

11.7.2 Unless otherwise provided in this agreement and except to the extent that the context otherwise requires, words and phrases used in this chapter shall be deemed to have the meaning they have for the purposes of the federal Tax Act.

11.7.3 To the extent not inconsistent with this chapter, the Tax Act shall apply to the provisions of this chapter with such modifications as the circumstances require.

11.7.4 A settlement corporation shall be deemed for purposes of the Tax Act not to be a "specified financial institution".

PERMITTED ACTIVITIES OF SETTLEMENT CORPORATIONS

Definition: For the purposes of this schedule, a "low-income participant" is a participant whose total family income is less than 75 percent of the Northwest Territories average annual family income as set out in the last available census data published by Statistics Canada on economic families.

The following are permitted activities of settlement corporations. Subject to 11.3.2, it is not necessary for any or all of the permitted activities to be carried out by a settlement corporation.

1. EDUCATION AND TRAINING

Funding or providing:

- (a) courses for non-native and native teachers and other instructors to enable them to conduct courses in native culture, language and similar areas;
- (b) training for native elders to enable them to participate in the delivery of native culture and language instructional programs;
- (c) native studies, cultural languages programs for participants and research relating thereto;
- (d) scholarships for participants to enable them to attend educational institutions within and outside the Northwest Territories;
- (e) vocational training and similar programs for participants within and outside the Northwest Territories;
- (f) native language and cultural teaching research programs; and
- (g) training for persons employed in connection with native justice programs and research related thereto.

2. SUPPLEMENTAL PROGRAM FUNDING

Supplementing existing programs relating to child care, adoption, alcohol and drug abuse, hospital construction or upgrading, medical, dental and mental health care and similar programs and initiating, funding and administering new programs in those areas.

3. GRANTS OR LOANS TO LOW-INCOME PARTICIPANTS

Funding or providing grants or low interest or forgivable loans or mortgages to low-income participants for the following purposes:

- (a) to enable them to acquire or make down payments on freehold or leasehold interests in residential property in Canada for their personal use;

- (b) funds for the renovation or repair of residential properties owned or leased by low-income participants in Canada for their personal use; and
- (c) financial assistance to low-income participants to enable them to pay municipal or other local taxes.

4. HOUSING

Funding or providing for the construction, operation and administration of housing or subsidized, co-operative or communal housing for low-income participants in Canada.

5. PUBLIC SERVICES

Funding or administering public services and works for the general benefit of participants, including without limitation transportation and utility services.

6. HERITAGE RESOURCES

Funding or providing:

- (a) programs and activities relating to the study, protection and preservation of Gwich'in heritage resources;
- (b) facilities for the preservation and display of Gwich'in heritage resources; and
- (c) publications and audio-visual materials related to Gwich'in heritage resources and cultural history.

7. ECONOMIC DEVELOPMENT

Providing loans, guarantees or minority capital investment to participants or to a taxable entity, other than a corporation which is controlled by one or more settlement corporations, engaged in an economic activity or promotion of economic development within the Northwest Territories provided that:

- (a) the participant or entity is unable to borrow at normal commercial rates from ordinary commercial lenders without guarantees provided by the settlement corporation;
- (b) the settlement corporation may not acquire a controlling equity interest in an entity except by way of realization of its security in which case its controlling interest in the entity shall be disposed of within two years of its acquisition; and
- (c) in the case of any such loan, the settlement corporation does not contract to receive a rate of return on any such loan that is greater than the prescribed rate for overpayments of income tax in effect at the time the loan was made, and such loans shall be provided only to such eligible participants and entities who are engaged in an economic activity, or promotion of economic development, conducted for the benefit of Gwich'in carried on within the Northwest Territories or the Yukon.

8. HARVESTING AND CULTURAL ACTIVITIES

Providing loans or minority capital investment to participants or entities for harvesting and cultural activities including manufacture of handicrafts, arts and crafts, hunting, fishing and trapping and like pursuits provided that:

- (a) the participant or entity is unable to borrow at normal commercial rates from ordinary commercial lenders without guarantees provided by the settlement corporation;
- (b) the settlement corporation may not acquire a controlling equity interest in an entity except by way of realization of its security in which case its controlling interest in the entity shall be disposed of within two years of its acquisition; and
- (c) in the case of any such loan, the settlement corporation does not contract to receive a rate of return on any such loan that is greater than the normal commercial rate of return for similar loans, or is less than the prime rate of interest charged by chartered banks in the settlement area and such loans shall be provided only to such eligible participants and entities who are engaged in a harvesting or cultural activity for the benefit of Gwich'in carried on within the Northwest Territories or the Yukon.

9. RECREATIONAL LANDS

Funding and administering parks and other recreational facilities for participants such as skating rinks, arenas, libraries, assembly halls and similar facilities.

10. ELDERS' ASSISTANCE

Providing funding to confer benefits on participants who are at least 60 years of age, provided such participants reach 60 years of age within five years of the date of settlement legislation and provided such benefits do not exceed an amount per individual, expressed in dollars, equal to the product of 3,541 and the quotient obtained when the latest available monthly value of the Consumer Price Index ("CPI") at the time the distribution is made is divided by the CPI in respect of April 1991.

11. CAPITAL DISTRIBUTION

Distributing to participants, once within the first 15 years from the date of settlement legislation, capital up to a maximum amount per participant, expressed in dollars, equal to the product of 3,541 and the quotient obtained when the latest available monthly value of the Consumer Price Index ("CPI") at the time the distribution is made is divided by the CPI in respect of April 1991.

12. OTHER PERMITTED COSTS AND DISBURSEMENTS BY A SETTLEMENT CORPORATION

- (a) Settlement and implementation costs relating to the agreement.
- (b) Administrative costs incurred by the settlement corporation in respect of the general administration and management of its activities and investments including, without limitation, administrative salaries, wages and related benefits, legal and accounting fees and costs incurred in acquiring, leasing and maintaining premises, provided that such administrative costs shall not exceed 10 percent of the assets of the settlement corporation annually for the first five years after the date of settlement legislation and three percent per year thereafter.

- (c) Transfers to other settlement corporations or to registered charities.
- (d) Transfers to low-income participants.
- (e) Payment of any taxes that are payable by a settlement corporation under any Tax Act or pursuant to this agreement.

Qualified investments for a trust governed by a Registered Retirement Savings Plan as defined in paragraph 146(1)(g) of the federal Tax Act.

12 WILDLIFE HARVESTING AND MANAGEMENT

12.1 OBJECTIVES

12.1.1 This chapter has the following objectives:

- (a) to protect for the future the right of the Gwich'in to gather, hunt, trap and fish throughout the settlement area at all seasons of the year;
- (b) to conserve and protect wildlife and wildlife habitat and to apply conservation principles and practices through planning and management;
- (c) to provide the Gwich'in with certain exclusive, preferential and other harvesting rights and economic opportunities related to wildlife;
- (d) to respect the harvesting and wildlife management customs and practices of the Gwich'in and provide for their ongoing needs for wildlife;
- (e) to involve the Gwich'in in a direct and meaningful manner in the planning and management of wildlife and wildlife habitat;
- (f) to integrate planning and management of wildlife and wildlife habitat with the planning and management of all types of land and water use in order to protect wildlife and wildlife habitat;
- (g) to ensure that traditional harvesting by other aboriginal peoples who have harvested in the settlement area can be accommodated in this agreement; and
- (h) to deal fairly and equitably with persons who hunt, trap, fish or conduct commercial wildlife activities in the settlement area and who are not participants.

12.2 DEFINITIONS

12.2.1 In this chapter,

"Board" means the Renewable Resources Board; and

"edible products of wildlife" includes those parts of wildlife traditionally consumed for food by aboriginal people.

12.3 GENERAL

12.3.1 Government shall retain the ultimate jurisdiction for the management of wildlife and wildlife habitat. Government shall continue to have the jurisdiction to initiate programs and to enact legislation with respect to the settlement area which are not inconsistent with this agreement.

12.3.2 The exercise of the rights of the Gwich'in under this chapter is subject to the limitations provided in this agreement and to legislation in respect of conservation, public health or public safety.

12.3.3 Nothing in this agreement is intended to confer rights of ownership in any wildlife.

12.3.4 Nothing in this agreement shall be construed as granting a participant any right to buy, sell or offer for sale any migratory game bird, or parts thereof, or migratory game bird's egg not authorized for sale by law.

12.3.5 The right to harvest wildlife pursuant to this chapter does not extend to migratory non-game birds and migratory insectivorous birds as defined in the *Migratory Birds Convention Act*, R.S. 1985, c. M-7.

12.4 HARVESTING

12.4.1 The Gwich'in have the right to harvest all species of wildlife within the settlement area at all seasons of the year subject to limitations which may be prescribed in accordance with this agreement.

12.4.2 The right described in 12.4.1 does not preclude persons who are not participants from harvesting in accordance with legislation.

12.4.3

- (a) Subject to the provisions of this agreement, the Gwich'in have the exclusive right to harvest wildlife on Gwich'in lands.
- (b) No person who is not a participant may harvest wildlife, other than fish or migratory game birds as may be provided pursuant to this agreement, on or in waters overlying Gwich'in lands.

12.4.4

- (a) The Gwich'in may use the special harvesting areas identified in schedules V to VIII, appendix F, to harvest fish or other species of wildlife specified for those special harvesting areas. The disposition of wildlife harvested from such areas is subject to 12.4.16.
- (b) Persons who are not participants may not have access to such areas for the purpose of harvesting wildlife where such harvesting would be inconsistent with the special harvesting by the Gwich'in.
- (c) Persons who are not participants may, pursuant to legislation, harvest moose in the special harvesting areas designated for the harvesting of moose during a season in the fall of the year. The season in such area shall be no longer than 90 days in duration and shall close no later than the 16th day of December in any calendar year. Such special harvesting areas are set out in schedule VIII, appendix F.
- (d) The Board may change or remove any such special harvesting areas and the conditions attached thereto, with the consent of the affected Renewable Resources Council.

12.4.5

- (a) The Gwich'in have the exclusive right to harvest fur bearers throughout the settlement area.
- (b) Notwithstanding (a), persons who are not participants may hunt, but not trap, wolves, wolverines and coyotes on lands other than Gwich'in lands throughout the settlement area in accordance with legislation.

12.4.6 A Renewable Resources Council may permit any person, within the limits prescribed by laws affecting wildlife harvesting and management and by this agreement, to harvest wildlife from the lands referred to in 12.4.3, to harvest wildlife to which the Gwich'in have been granted special harvesting rights in 12.4.4, and to harvest fur bearers to which the Gwich'in have the exclusive right, upon terms and conditions respecting species, location, methods, quantities, seasons and duration of harvest as may be set by the Renewable Resources Council. In the case of 12.4.4, such permission may only be granted for the period of Gwich'in exclusive use and in respect of the species for which the special harvesting area was established. Where the Renewable Resources Council has received a request for permission to harvest pursuant to this provision, it shall render a decision within 60 days of the request and duly communicate such decision to the applicant.

12.4.7 Where a Renewable Resources Council has granted or refused permission to a person who is not a participant to harvest fur bearers on lands in the settlement area which are not Gwich'in lands and on which fur bearers are not being harvested, such person may apply in writing to the Board for a review of such refusal or of the terms and conditions attached to any permission. The Board shall consider such application within 60 days of receipt and may set aside the decision of the Renewable Resources Council and may substitute its own decision together with terms and conditions, if the Board determines that it is reasonable, in all the circumstances, to do so. The decision of the Board shall not be subject to review by the Minister.

12.4.8 Where in accordance with this chapter, a Renewable Resources Council permits persons who are not participants to harvest wildlife, harvesting by those persons shall be in accordance with legislation and such conditions as may be set by the Renewable Resources Council. Where such permission is granted to persons who are not participants, the resulting harvest shall not be included in the Gwich'in Needs Level established pursuant to 12.5.

12.4.9 The Gwich'in shall not charge a fee or receive a benefit for the act of granting a person who is not a participant permission to harvest wildlife. The Gwich'in may charge a fee or obtain a benefit:

- (a) for granting access to Gwich'in lands to a person who is not a participant for harvesting; or
- (b) for services and facilities provided to a person who is not a participant in connection with harvesting wildlife.

12.4.10 (a) The Gwich'in have the right of access to all lands within the settlement area for the purpose of harvesting wildlife, subject to 12.4.10(b), 12.4.12, 12.4.13, 15.1.2 and 26.2.1.

(b) The exercise of the right of access provided by (a) to lands owned in fee simple or subject to an agreement for sale or a surface lease, is subject to the following conditions:

- (i) that there be no significant damage to the lands, and the user shall be responsible for any such damage;
- (ii) there be no mischief committed on the lands;
- (iii) there be no significant interference with the occupier's use of, and peaceable enjoyment of, the lands; and

(iv) unless otherwise provided for in an agreement with the owner or occupier, Gwich'in using this right of access do so at their own risk and have no right of action against the owner or occupier for loss suffered or damage arising therefrom.

12.4.11 (a) The Gwich'in right of access granted by 12.4.10 includes the right to travel and establish and maintain hunting, trapping and fishing camps.

(b) In (a), "camp" means a facility established for the personal use of the Gwich'in for the purpose of wildlife harvesting.

(c) The Gwich'in right of access described in 12.4.10 includes the use of plants and trees for purposes ancillary to wildlife harvesting.

12.4.12 The right of access granted by 12.4.10 shall not extend to:

(a) lands dedicated to military or national security purposes pursuant to legislation or areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been given to the affected Gwich'in community or communities;

(b) lands which, at the date of settlement legislation, are owned in fee simple or are subject to an agreement for sale or to a surface lease;

(c) lands within municipal boundaries which, after the date of settlement legislation, are granted in fee simple, made subject to an agreement for sale or to a surface lease;

(d) lands outside municipal boundaries of 130 hectares (approximately 321 acres) or less in surface area which after the date of settlement legislation are granted in fee simple or made subject to an agreement for sale or to a surface lease; and

(e) lands the right of access to which is restricted in accordance with 12.4.13.

12.4.13 (a) It is recognized that some uses of land, which may be authorized in the future, may conflict with harvesting activities and thus be incompatible with the exercise of Gwich'in harvesting rights.

(b) If government or a holder of an interest in land (hereinafter "the proponent") proposes that the right of access granted in 12.4.10 should be restricted because a proposed use of land would conflict with harvesting, the proponent, after consultation with the Gwich'in Tribal Council with respect to the proposal, shall give notice to any other holder of an interest in the land and to any Renewable Resources Council for the area in which the land is situated specifying the nature, extent, duration and conditions as well as a proposal for public notice of the proposed restriction.

(c) Any Renewable Resources Council or holder of an interest in the land to which the notice has been sent may, within 60 days of receipt of the notice, or such other period as the Board may establish, refer the proposal to arbitration pursuant to chapter 6, which shall determine:

(i) whether the proposed use conflicts with harvesting, and if so,

- (ii) the nature, extent, duration and conditions of the restriction on access for harvesting, including the establishment and maintenance of hunting, trapping and fishing camps, required to allow the proposed use.
- (d) The arbitrator shall ensure that a restriction shall only apply for as long as the land is in actual use and only to the extent necessary to permit the proposed use without conflict.
- (e) Where no reference to arbitration is made pursuant to (c), the proposed restriction shall come into effect, according to the terms specified in the notice described in (b), unless otherwise agreed to by the parties.
- (f) The provisions of **12.4.13** do not apply to Gwich'in lands.

12.4.14 The Gwich'in have the right to employ any methods of harvesting and to possess and use any equipment for the purpose of harvesting. In addition to being subject to legislation referred to in **12.3.2**, this right is also subject to legislation respecting the humane harvesting of wildlife. Government agrees that no legislation respecting the humane harvesting of wildlife will be introduced without prior consultation with the Gwich'in Tribal Council.

12.4.15 The exercise of the rights of the Gwich'in in **12.4.10**, **12.4.14** and **15.1.2** is subject to legislation for the protection of the environment from significant damage.

12.4.16

- (a) The Gwich'in have the right to trade among themselves and with other aboriginal persons, for personal consumption, edible products of wildlife harvested by them.
- (b) In (a), "aboriginal persons" means aboriginal persons
 - (i) who reside in and who are eligible to harvest wildlife in the Northwest Territories; or
 - (ii) who are members of a Yukon First Nation and who reside in the Yukon.
- (c) Nothing in **12.4.16** is intended to confer any rights on any persons other than the Gwich'in.
- (d) The right provided in (a) is intended to maintain traditional sharing among individuals and communities and is not to be exercised in a manner that would be considered by the Board to be commercial. The Board may propose regulations in respect of such trade but only to ensure that it is not done in a manner that it considers commercial. Notwithstanding **12.8.25**, the Minister may review any such proposed regulation only for purposes of conservation, public safety or public health.

12.4.17 The Gwich'in have the right to trade with any person any non-edible products of wildlife that are obtained from the harvesting of fur bearers or incidentally from the harvesting of wildlife for personal use.

12.4.18 The right to harvest wildlife includes the right to possess and transport wildlife parts and products in the Northwest Territories, in other areas where provided for in this agreement, and between the Northwest Territories and such other areas.

12.4.19 (a) Where required by the Board, participants shall show proof of enrolment as provided by the Enrolment Board pursuant to 4.5.2(i).

(b) The Board may require participants to obtain permits or licences for the purpose of regulating harvesting, but participants shall not be required to pay any fee or tax for any non-commercial permit or licence.

12.4.20 Nothing in this agreement prevents any person from killing wildlife in the settlement area for survival in an emergency.

12.5 LIMITATION OF THE HARVEST

12.5.1 The Board may limit the quantity of the harvest by the Gwich'in in accordance with the procedure set out in 12.5.

12.5.2 The Board may, in accordance with this chapter, establish, modify or remove total allowable harvest levels from time to time in the settlement area but shall establish or modify such levels only if required for conservation and to the extent necessary to achieve conservation. Unless a total allowable harvest is established, the quantity of the harvest by the Gwich'in may not be limited.

12.5.3 Where a total allowable harvest has been established, the Board shall allocate for the Gwich'in a portion or all of the total allowable harvest, hereinafter called the "Gwich'in Needs Level". When the Gwich'in Needs Level equals or is less than the total allowable harvest it shall constitute a first demand on the total allowable harvest. When the Gwich'in Needs Level is greater than the total allowable harvest, the Gwich'in shall be allocated not more than the total allowable harvest.

12.5.4 The Board may establish the total allowable harvest and the Gwich'in Needs Level for a particular wildlife species or population applicable to the settlement area as a whole, or to particular areas or communities. The Board may adjust the Gwich'in Needs Level from time to time.

12.5.5 When establishing and adjusting a Gwich'in Needs Level, the Board shall consult with Renewable Resources Councils and shall consider all relevant factors including in particular:

(a) the usage patterns and levels of past harvests by the Gwich'in;

(b) personal consumption needs of the Gwich'in, including their nutritional, clothing and cultural needs and fish for their dogs;

(c) trade among the Gwich'in to meet their needs described in (b); and

(d) the availability of various wildlife species and populations to meet these needs.

12.5.6 A Settlement Area Harvest Study shall be conducted in order to provide necessary information for the Board and government to effectively manage wildlife. The terms of reference for the harvest study are set out in schedule I to this chapter.

12.5.7 Except when the total allowable harvest is less than the Gwich'in Minimum Needs Level established pursuant to **12.5.8** or **12.5.9**, the Gwich'in Needs Level may be established above or at, but shall never be established below, the Gwich'in Minimum Needs Level.

12.5.8 When the study described in **12.5.6** has been completed, the Gwich'in Minimum Needs Level for a species or population of wildlife shall be equal to one half of the sum of the average annual harvest by the Gwich'in over the first five years of the study and the greatest amount taken in any one of those five years, which calculation is expressed mathematically as:

$$[\frac{h_1+h_2+h_3+h_4+h_5}{5} + h_{\max}] \times 1/2$$

h_1 = harvest in year 1
 h_2 = harvest in year 2
 h_3 = harvest in year 3
 h_4 = harvest in year 4
 h_5 = harvest in year 5
 h_{\max} = greatest amount taken in years 1-5

12.5.9 (a) Until the study described in **12.5.6** is completed, and when a total allowable harvest is established, the Board shall set the Gwich'in Minimum Needs Level in accordance with the calculation in **12.5.8**, using the best information available to estimate the annual harvest levels for the five years prior to establishment of the total allowable harvest. The Board may review and adjust such Minimum Needs Level as the study data become available.

(b) Notwithstanding **12.5.7**, if the Gwich'in Tribal Council or the appropriate Renewable Resources Council advises the Board that the Gwich'in Needs Level for a particular species, population, area or community will not be required in a particular harvesting period, the Board may allocate such unrequired portion, or a part thereof, pursuant to **12.5.15**.

12.5.10 **12.5.11** to **12.5.14** shall apply to the species named therein, notwithstanding **12.5.1** to **12.5.9**.

Muskox

12.5.11 In the case of muskox, the Board, after consultation with the affected Renewable Resources Council with respect to location, methods, quantities, seasons and like matters, shall allocate a portion of any total allowable harvest in excess of the Gwich'in Needs Level for persons who are not participants.

Moose and Barren-ground Caribou

12.5.12 In the case of moose and barren-ground caribou, the Board, after consultation with the affected Renewable Resources Councils with respect to location, methods, quantities, seasons and like matters, shall allocate a portion of any total allowable harvest in excess of the Gwich'in Needs Level for persons who are not participants.

Sheep

12.5.13

In the case of sheep in the Mackenzie Mountains, the Board shall allocate a portion of any total allowable harvest in excess of the Gwich'in Minimum Needs Level for persons who are not participants. For the purpose of 12.5.13, Mackenzie Mountains means that portion of Unit E, as described in the Government of the Northwest Territories Wildlife Management Unit Regulations (R-057-83), which is in the settlement area.

Migratory Game Birds

12.5.14

(a) The Board may, in accordance with the provisions of this agreement, establish the total allowable harvest of migratory game birds in the settlement area:

- (i) recognizing the national and international responsibilities of the Minister, the Board shall ensure that the total allowable harvest figures are received by the Minister on a date, to be specified by the Minister, that will allow consideration of such total allowable harvest for the settlement area when regulations for other users who harvest the same migratory game bird species outside the settlement area are being established. If such figures are not received by the Minister by the specified date, the Minister may establish the total allowable harvest for the settlement area and advise the Board accordingly;
- (ii) the total allowable harvest for a migratory game bird species or population for the settlement area shall always be set at a percentage at least equal to the percentage that the settlement area harvest, as determined in (b)(i), bears to the total harvest of such migratory game bird species or population throughout Canada during the same period; and
- (iii) the total harvest figures for Canada of each migratory game bird species or population harvested in the settlement area shall be provided to the Board by the Minister as required to enable the Board to establish the total allowable harvest for the settlement area.

(b) The Board shall establish the Gwich'in Minimum Needs Level for migratory game birds in the following manner:

- (i) the total annual harvest for a migratory game bird species or population in the settlement area and the harvest by the Gwich'in and by persons who are not participants shall be determined for five consecutive years and the average annual harvest by Gwich'in and by persons who are not participants will be calculated;
- (ii) the percentage of the Gwich'in average annual harvest of the total average annual harvest for migratory game bird species or populations in the settlement area shall be determined for such migratory game bird species or populations; and
- (iii) the total allowable harvest in any one year for such species or population, multiplied by the percentage determined in (b)(ii), shall constitute the Gwich'in Minimum Needs Level for that year.

(c) The Board shall establish a Gwich'in Needs Level for migratory game birds in accordance with the provisions of this agreement and shall consult with the Gwich'in Tribal Council with respect to allocating the Gwich'in Needs Level among Gwich'in communities.

Allocation

12.5.15

In allocating any total allowable harvest in excess of the Gwich'in Needs Level, the Board shall consider all relevant factors, including the following factors (which are not intended to be in order of priority):

- (a) requirements of long-term residents of the Mackenzie Valley who are not participants who rely on wildlife from the settlement area for food for themselves, their families and their dogs;
- (b) personal consumption needs of other aboriginal peoples who have harvesting rights in the settlement area;
- (c) demand for hunting and sport fishing by:
 - (i) residents of the Northwest Territories who are not participants; and
 - (ii) other persons who are not participants;
- (d) commercial demand inside and outside the settlement area; and
- (e) demand by lodges and outfitters.

12.6

MANAGEMENT OF MIGRATORY SPECIES

12.6.1

Government undertakes that plans for wildlife management and habitat management will be designed to maintain or enhance the productivity of populations of migratory species within the Northwest Territories and Yukon Territory in an integrated fashion.

12.6.2

Government shall work with the Board, other wildlife management bodies and users to establish wildlife management agreements with respect to migratory species. Where an agreement has not been concluded for the management of a migratory species, government may exercise its powers of management including stipulating the terms of a management plan which shall be binding on all persons.

12.6.3

Government shall work with the users of the Bluenose caribou herd for the purpose of establishing an agreement for the management of the herd.

12.6.4

The provisions of the Porcupine Caribou Management Agreement and any management agreement established with respect to the Bluenose caribou herd shall apply to the herds named therein, notwithstanding any provisions of this agreement which may be inconsistent with such agreements.

12.6.5 In respect of migratory species which cross international boundaries, Canada shall endeavour to include the countries concerned in cooperative conservation and management agreements and arrangements. Canada shall endeavour to have provisions in such agreements respecting joint research objectives and related matters respecting the control of access to populations.

12.6.6 Government shall provide the Gwich'in with the opportunity to be represented in any Canadian management regime in respect of migratory species which are established pursuant to international or domestic agreements and which affect migratory species in the settlement area.

12.6.7 Canada shall consult the Board in developing Canadian positions for international consultations and negotiations relevant to migratory game bird management in the settlement area.

12.7 COMMERCIAL OPPORTUNITIES RELATED TO WILDLIFE

Commercial Harvesting

12.7.1 (a) The Board shall determine whether commercial harvesting is to be permitted in a particular area for a particular species or population and may prescribe terms and conditions for such harvesting. The terms and conditions may include general licence terms in respect of employment, training and business opportunities for the Gwich'in, non-interference with harvesting by the Gwich'in, and like matters.

(b) Where there has not been commercial harvesting described in (a) at any time during the previous three years, the Board shall require the consent of the affected Renewable Resources Council before permitting such commercial harvesting. A Renewable Resources Council shall render a decision within such reasonable time as is specified by the Board.

(c) On application by an interested party, or on its own motion, the Board may review the decision of a Renewable Resources Council under (b) not to consent to such commercial harvesting and may permit such harvesting if the Board determines that it is reasonable, in all the circumstances, to do so.

12.7.2 The Gwich'in Tribal Council shall have the right of first refusal, in accordance with the provisions of 12.7.5, to any new licence for the commercial harvesting of wildlife. The provisions of 12.7.2 do not apply to commercial fishing licences.

Commercial Harvesting of Fish

12.7.3 (a) In 12.7.3,

(i) a licence shall be deemed to be valid at the date of settlement legislation if the licence was valid for the April 1 to March 31 period in which the date of settlement legislation occurs; and

(ii) "fishery" means the commercial harvesting of a specific fish species in a specific location as set out in legislation.

(b) Government may not issue a licence for a fishery in waters overlying Gwich'in lands to a person who is not a participant except in the case of a person who:

- (i) held a licence which was valid at the date of settlement legislation for a fishery in waters overlying Gwich'in lands; and
- (ii) applies to renew and is issued such licence within the April 1 to March 31 period in which the date of settlement legislation occurs and in every April 1 to March 31 period thereafter.

(c) Government may only issue a licence for a fishery in the waters listed in schedule VI, appendix F, to a person who:

- (i) held a licence which was valid at the date of settlement legislation for a fishery in the waters listed in schedule VI, appendix F; and
- (ii) applies to renew and is issued such licence within the April 1 to March 31 period in which the date of settlement legislation occurs and in every April 1 to March 31 period thereafter.

(d) In the case of the commercial harvesting of fish in waters other than waters in (b):

- (i) government shall offer to the Gwich'in for every licensing period after the date of settlement legislation and for each fishery a number of licences equal to the larger of
 - (A) the number of licences held by Gwich'in at the date of settlement legislation who met any minimum production requirements, and if there are no production requirements, who actually fished pursuant to a licence during the fishing season immediately preceding the date of settlement legislation, and
 - (B) the number of licences held by Gwich'in at the date of settlement legislation who met any minimum production requirements, and if there are no production requirements, who actually fished pursuant to a licence during the fishing season two seasons immediately preceding the date of settlement legislation;
- (ii) government shall first offer the licences described in (i) to Gwich'in who, in the fishery for which the licence is offered, met any minimum production requirements, and if there are no production requirements, who actually fished pursuant to a licence, in both or either of the two immediately preceding fishing seasons; and second, to the Gwich'in Tribal Council;
- (iii) subject to (iv), the Gwich'in Tribal Council shall have the right of first refusal, for each fishery, to one half of any licences which are new, not renewed or not re-issued to the previous holder;
- (iv) the right provided in (iii) shall not apply for any fishing season for any fishery in respect of which Gwich'in and the Gwich'in Tribal Council together have been offered or issued at least 50 percent of the licences for that fishing season for that fishery; and

(v) after the Gwich'in have been offered or have taken up licences pursuant to (i) or (iii), Gwich'in shall be treated on the same basis as other licence applicants in respect of a particular fishery.

Commercial Naturalist Activities and Commercial Guiding and Outfitting Activities in Respect of Hunting and Sport Fishing

12.7.4 The provisions of 12.7.1 apply, with such modifications as the circumstances require, to commercial naturalist activities and to commercial guiding and outfitting activities in respect of hunting and sport fishing.

12.7.5 (a) The Gwich'in Tribal Council shall have the right of first refusal to a new licence for an activity described in 12.7.4 in the settlement area, provided that the Board provides that a portion of such licences for guiding and outfitting for barren-ground caribou be reserved for residents who are not participants.

(b) Where a person who is not a participant has applied for a licence as described in (a), other than a licence reserved for such resident, the Gwich'in Tribal Council shall be duly notified of such application and shall have such reasonable time as is specified by the licensing authority to prepare and submit an application for the licence. The Gwich'in Tribal Council shall be awarded the licence except where:

(i) the Gwich'in Tribal Council fails to submit an application in the form and manner required for such applications by legislation and by the licensing authority and within the time specified in (b); or

(ii) the licensing authority determines that the application of the Gwich'in Tribal Council would not provide a comparable degree of long-term economic benefit to the community compared to the person's application.

12.7.6 (a) In the event that the holder of a licence in respect of any of the activities described in 12.7.4 intends to relinquish the licence and/or sell or transfer the enterprise, or any part thereof, the Gwich'in Tribal Council shall have the right of first refusal to take up such licence and/or the first opportunity to purchase the said enterprise or the part thereof at fair market value, provided that the following shall not be considered as sales or transfers under 12.7.6:

(i) sales or transfers to persons holding rights or options to purchase as at the date of this agreement;

(ii) sales or transfers to persons who are members of the holder's immediate family, and who are themselves eligible to hold a licence; or

(iii) incorporations or reorganizations which do not affect the effective ownership of the enterprise, or amount to an effective sale or transfer of all or a part thereof.

(b) Procedures for the exercise of the right of first refusal in (a) are set out in schedule II to this chapter.

Commercial Propagation, Cultivation and Husbandry Activities

12.7.7 (a) Where, in the opinion of the Board, a proposed commercial activity for the propagation, cultivation or husbandry of a species of wildlife indigenous to the settlement area could adversely affect harvesting by the Gwich'in by reason of the area in which it is proposed to be carried on, or otherwise, the Board shall require the consent of the Renewable Resources Council for the area.

(b) Where, in the opinion of the Board, a proposed commercial activity for the propagation, cultivation or husbandry of a species of wildlife which is not indigenous to the settlement area could adversely affect harvesting by the Gwich'in by reason of the area in which it is proposed to be carried on, the Board shall require the consent of the Renewable Resources Council for the area.

(c) On application by an interested party, or on its own motion, the Board may review a decision of a Renewable Resources Council under (a) and (b), and may permit the proposed commercial activity if the Board determines that it is reasonable, in all the circumstances, to do so.

(d) The Board shall advise the appropriate licensing authority of its decision pursuant to **12.7.7.**

12.7.8 The Gwich'in Tribal Council shall have a right of first refusal in accordance with the provisions set out in **12.7.5** to any new licence in respect of commercial activities described in **12.7.7(a).**

Muskox

12.7.9 The Gwich'in Tribal Council shall have the exclusive right to be licensed to commercially harvest free-roaming muskox and the exclusive right to be licensed to provide guiding services and harvesting opportunities with respect to this species.

General Conditions

12.7.10 The Gwich'in shall have the exclusive right to be licensed to conduct commercial wildlife activities on Gwich'in lands, and to permit others to do so, subject to rights existing at the date of settlement legislation.

12.7.11 Government shall, upon request and at reasonable rent, permit the use of or lease such lands to the Gwich'in as in the opinion of government are reasonably necessary to carry out the licensed activities described in this chapter.

12.7.12 The commercial wildlife activities referred to in **12.7** shall be conducted in accordance with legislation affecting such activities. A licence fee may be required to engage in such activities.

12.8

RENEWABLE RESOURCES BOARD

12.8.1

- (a) A Renewable Resources Board shall be established to be the main instrument of wildlife management in the settlement area. The Board shall act in the public interest.
- (b) The Board shall be established by virtue of settlement legislation at the date thereof.
- (c) Wildlife shall be managed in the settlement area in accordance with this agreement including its objectives.

12.8.2

- (a) Where, by legislation, any other renewable resources board ("the new board") is established having jurisdiction in an area within the Mackenzie Valley which includes the settlement area:
 - (i) the new board shall assume the powers and responsibilities of the Board;
 - (ii) the Board shall merge with and become a regional panel of the new board. The regional panel shall be reduced to five members of which two shall be nominees of the Gwich'in Tribal Council;
 - (iii) the regional panel shall exercise the powers of the Board except that where, in the opinion of the new board, any decision or recommendation may affect renewable resources in an area within the jurisdiction of the new board outside the settlement area, the decision or recommendation shall be made by the new board. At least one member of the new board making such a decision or recommendation shall be a nominee of the Gwich'in Tribal Council; and
 - (iv) decisions of the regional panel shall be decisions of the new board and subject to review by the Minister in the same manner as decisions of the Board.
- (b) The Gwich'in Tribal Council shall be consulted with respect to any such legislation.

Establishment and Structures

12.8.3

The Board shall consist of seven members appointed as follows:

- (a) six members and six alternate members to be appointed jointly by the Governor in Council and Executive Council of the Government of the Northwest Territories ("Executive Council"), of whom three members and three alternate members shall be appointed from nominees put forward by each of the Gwich'in and government, provided that the Board shall include at least one resident of the Northwest Territories who is not a participant; and
- (b) a chairperson, resident in the settlement area, to be nominated by the members of the Board appointed under (a) and appointed jointly by the Governor in Council and Executive Council.

12.8.4 (a) Board members shall not be considered to have a conflict of interest by reason only of being public servants or employees of Gwich'in organizations.

(b) Each member shall, before entering upon his or her duties as such, take and subscribe before an officer authorized by law to administer oaths, an oath in the form set out in schedule III to this chapter.

12.8.5 In the event that the Board does not recommend a chairperson within 90 days after the other members of the Board are appointed, the Minister of Indian Affairs and Northern Development jointly with the Minister of Renewable Resources of the Government of the Northwest Territories shall, after consultation with the Board, recommend a chairperson to the Governor in Council and Executive Council.

12.8.6 Should any party fail to nominate members to the Board within 90 days of the date of settlement legislation, the Governor in Council and Executive Council may jointly appoint any persons to complete the Board.

12.8.7 Should a member resign or otherwise leave the Board, the body which nominated that member shall nominate a replacement within 90 days.

12.8.8 A vacancy in the membership of the Board does not impair the right of the remainder to act.

12.8.9 Each member shall be appointed to hold office for a specific term not to exceed five years. A member may be reappointed.

12.8.10 A member may be removed from office at any time for cause by the Governor in Council and Executive Council after consultation with or at the request of the body which nominated the member.

Administration and Procedure

12.8.11 The Board may make by-laws:

(a) respecting the calling of meetings of the Board; and

(b) respecting the conduct of business at meetings of the Board, including in-camera meetings, and the establishment of special and standing committees of the Board, the delegation of duties to such committees and the fixing of quorums for meetings of such committees.

12.8.12 A majority of the members from time to time in office constitutes a quorum of the Board.

12.8.13 The Board shall have, subject to its approved budget, an Executive Director and such staff, professional and technical advisors and consultants as are necessary for the proper conduct of its affairs.

12.8.14 The Board shall be accountable to government for its expenditures.

12.8.15 It is intended that there be no duplication in the functions required for the public management of wildlife.

12.8.16 The Board shall prepare an annual budget, subject to review and approval by government. The approved expenses of the Board shall be a charge on government. Such budget shall be in accordance with the Government of Canada's Treasury Board guidelines and may include:

- (a) remuneration and travel expenses for attendance of Board members at board and committee meetings;
- (b) the expenses of public hearings and meetings;
- (c) a budget for research, public education and other programs as may be approved by government from time to time; and
- (d) the expenses of staff, advisors and consultants and of the operation and maintenance of the office.

12.8.17 The annual budget of the Board in its first year of operation shall be set out in the implementation plan.

12.8.18 The Board may make rules respecting the procedure for making applications, representations and complaints to it, including the conduct of hearings before it, and generally respecting the conduct of any business before it.

12.8.19 The Board shall have the powers of a commissioner under part I of the *Inquiries Act*, R.S. 1985, c. I-11. The Board may not, however, subpoena Ministers.

12.8.20 The Board may consult with government, communities, the public and with Renewable Resources Councils and may do so by means of informal meetings or public hearings.

12.8.21

- (a) A public hearing may be held by the Board where the Board is satisfied that such a hearing is desirable.
- (b) A public hearing shall be held when the Board intends to consider establishing a total allowable harvest and a Gwich'in Needs Level in respect of a species or population of wildlife which has not been subject to a total allowable harvest level within the previous two years.

12.8.22 A public hearing may be held at such place or places within the settlement area as the Board may designate.

Powers of the Renewable Resources Board

12.8.23 In furtherance of its purpose as the main instrument of wildlife management in the settlement area, the Board shall have the power to:

- (a) establish policies and propose regulations in respect of:
 - (i) the harvesting of wildlife by any person, including any class of persons;
 - (ii) the commercial harvesting of wildlife; and
 - (iii) commercial activities relating to wildlife including:
 - (A) commercial establishments and facilities for commercial harvesting; propagation, cultivation and husbandry of fur bearers and other species; and commercial processing, marketing and sale of wildlife and wildlife products, which may include trade with persons not included in 12.4.16;
 - (B) guiding and outfitting services; and
 - (C) hunting, fishing and naturalist camps and lodges;
- (b) exercise the powers and duties given to it elsewhere in the agreement;
- (c) approve plans for the management and protection of particular wildlife populations, including transplanted wildlife populations and endangered species, and particular wildlife habitats including conservation areas, territorial parks and national parks in the settlement area;
- (d) approve the designation of conservation areas and endangered species;
- (e) approve provisions of interim management guidelines, park management plans and policies that impact on wildlife and harvesting by the Gwich'in in a national park;
- (f) approve regulations which may be proposed by government pursuant to 12.8.29, except for those in respect of which the Board has already made a final decision under 12.8.27;
- (g) establish rules and procedures for the carrying out of any consultation required by these provisions; and
- (h) review any matter in respect of wildlife management referred to it by government.

12.8.24 (a) Unless the Minister directs otherwise, the Board shall forward all its decisions, except those made pursuant to 12.4.7, to the Minister, accompanied by draft regulations, where the Board proposes regulations.

(b) Unless the Minister directs otherwise, all decisions of the Board, except those made pursuant to 12.4.7, shall be confidential until the process in 12.8.25 has been completed, or the time provided for the process has expired.

12.8.25 The Minister may, within 60 days of the receipt of a decision under 12.8.24, accept, vary or set aside and replace the decision. The Minister must consider the same factors as were considered by the Board and in addition may consider information not before the Board, and matters of public interest not considered by the Board. Any proposed variation or replacement shall be sent back to the Board by the Minister with written reasons.

12.8.26 The Minister may extend the time provided in 12.8.25 by 30 days.

12.8.27 (a) The Board shall, within 30 days of the receipt of a variation or replacement from the Minister pursuant to 12.8.25, make a final decision and forward it to the Minister with written reasons.

(b) The Minister may extend the time provided under (a).

12.8.28 The Minister may, within 30 days of receipt of a final decision of the Board accept or vary it, or set it aside and replace it, with written reasons. The Minister may consider information not before the Board and matters of public interest not considered by the Board.

12.8.29 Government shall, as soon as practicable, implement:

(a) all decisions of the Board which are accepted by the Minister under 12.8.25;

(b) all decisions of the Minister under 12.8.28; and

(c) subject to (a) and (b), all decisions of the Board after the expiry of the time provided in 12.8.25 and 12.8.28.

12.8.30 Government may make changes of a technical nature only, not going to substance, to any decision or final decision of the Board, without varying or setting aside and replacing the decision or final decision, provided the Board is advised of any such change.

Licensing and Enforcement

12.8.31 The Board shall not issue licences, or hear and decide applications for individual commercial undertakings, or enforce legislation, unless otherwise agreed by government and the Gwich'in.

Advisory Powers

12.8.32 Government may consult the Board on any matter which will likely impact on wildlife or wildlife habitat in the settlement area and shall seek the timely advice of the Board on the following matters:

(a) draft legislation respecting wildlife or wildlife habitat;

(b) land use policies or draft legislation which will likely impact on wildlife or wildlife habitat;

- (c) proposed inter-provincial or international agreements which will likely impact on wildlife, wildlife harvesting or wildlife habitat;
- (d) the establishment of new national parks and territorial parks;
- (e) plans for public education on wildlife, wildlife harvesting and wildlife habitat;
- (f) policies respecting wildlife research and the evaluation of wildlife research in the settlement area;
- (g) plans for cooperative management and research relating to species and populations not wholly within the settlement area, such as the Porcupine caribou herd; and
- (h) plans for training Gwich'in in management of wildlife and related economic opportunities.

12.8.33 The Board shall provide any advice to government under 12.8.32 within such reasonable time as government requires, failing which, government may proceed without any such advice.

12.8.34 The Minister may request the Board to exercise a power described in 12.8.23 and the Board shall comply with the request within such reasonable time as the Minister requires.

12.8.35 If urgent circumstances require an immediate decision respecting matters referred to in 12.8.23 or 12.8.32, the Minister or his designated agent may make an interim decision and take such action as required to implement the interim decision without receiving a decision or advice from the Board. The Minister shall advise the Board forthwith of the interim decision made or action taken and the reasons therefor and direct the Board to review the decision made or action taken and render its decision or advice in accordance with this agreement.

12.8.36 The Board may:

- (a) advise the Minister or government of any matter relating to wildlife or wildlife habitat at any time whether or not the Minister or government has requested such advice; and
- (b) request the parties to this agreement to review any of its provisions.

Research and Harvesting Studies

12.8.37 It is intended that the Board and government departments and agencies work in close collaboration, and exchange full information on their policies, programs and research.

12.8.38 The Board may participate in harvesting studies, in data collection and in the evaluation of wildlife research. It is intended that the Board have an independent research capability, to the extent agreed by government and which does not duplicate research which is otherwise available to it.

12.8.39 The Board shall establish and maintain a public file for reports, research papers and data received by the Board. Any material furnished on a confidential basis shall not be made public without the consent of the originator.

12.8.40 Wildlife research or harvesting studies conducted in the settlement area by government, or by the Board, or with government assistance shall directly involve Renewable Resources Councils and Gwich'in harvesters to the greatest extent possible.

12.8.41 Notwithstanding 12.5.2 and until the Board exercises its powers or carries out its duties under 12.8.23, legislation and government policies in effect from time to time shall continue to apply.

12.9 RENEWABLE RESOURCES COUNCILS

12.9.1 There shall be a Renewable Resources Council in each Gwich'in community to encourage and promote local involvement in conservation, harvesting studies, research and wildlife management in the local community.

12.9.2 A Renewable Resources Council shall be composed of not more than seven persons who are residents of the local community.

12.9.3 A Renewable Resources Council shall be established by the designated Gwich'in organization in the community.

12.9.4 A Renewable Resources Council shall have the following powers:

- (a) to allocate any Gwich'in Needs Level for that community among local participants;
- (b) to manage, in a manner consistent with legislation and the policies of the Board, the local exercise of Gwich'in harvesting rights including the methods, seasons and location of harvest;
- (c) to establish group trapping areas, as defined in legislation, subject to the approval of the Board;
- (d) to exercise powers given to Renewable Resources Councils under this agreement; and
- (e) to advise the Board with respect to harvesting by the Gwich'in and other matters of local concern within the jurisdiction of the Board.

12.9.5 The Board shall consult regularly with Renewable Resources Councils with respect to matters within the Board's jurisdiction. Government and the Board may jointly delegate authority to Renewable Resources Councils, upon terms and conditions established by government and the Board.

12.9.6 Renewable Resources Councils shall participate in the collection and provision, to government and the Board, of local harvesting data and other locally available data respecting wildlife and wildlife habitat.

12.10 OTHER PROVISIONS

12.10.1 Government shall consult with the Gwich'in Tribal Council with respect to the formulation of government positions in relation to international agreements which may affect wildlife or wildlife habitat in the settlement area, including negotiations with respect to methods of harvesting and amendments to the *Migratory Birds Convention*(1916), prior to adopting positions.

12.10.2 (a) Persons who reside in the Mackenzie Valley or the Western Arctic Region and who held General Hunting Licences as at the date of settlement legislation may continue to harvest in the settlement area in accordance with legislation pertaining to such licences.

 (b) Any participant who held a General Hunting Licence as at the date of settlement legislation may continue to hold such licence and shall be permitted to harvest outside the settlement area in accordance with legislation pertaining to such licences.

TERMS OF REFERENCE: SETTLEMENT AREA HARVEST STUDY

The terms of reference for the Settlement Area Harvest Study (the "Harvest Study") pursuant to 12.5.6 of the agreement are as follows:

PURPOSE

The purpose of the Harvest Study is to provide information on harvesting necessary for the effective management of wildlife by the Board and government, including determination of the Gwich'in Minimum Needs Level pursuant to 12.5.8.

CO-OPERATIVE SPIRIT

The Harvest Study is a joint venture of the Gwich'in and government who commit themselves to work in a co-operative spirit.

RESPONSIBILITY

The Board shall be responsible for the design and the conduct of the Harvest Study. The Board shall establish a Working Group, composed of equal representation of the Gwich'in and the agencies with wildlife management responsibilities in the study area, to support the Harvest Study.

METHODOLOGY AND DESIGN

The Working Group shall develop the methodology and design of the Harvest Study which shall be approved by the Board. The Harvest Study will provide for training of community field workers, education of the respondents regarding the importance of the Harvest Study, and the involvement of community organizations.

SCOPE

The Harvest Study shall cover all Gwich'in and others who harvest in the settlement area for those species designated in the Harvest Study.

SCHEDULING

The Harvest Study shall be initiated within one year of the establishment of the Board and shall be conducted for a minimum of five consecutive years.

DATA SHARING

The data shall be recorded in a manner that ensures harvester confidentiality. All information collected, whether in its raw form or after being compiled and analyzed, with the exception of identification of the harvesters, shall be provided to the Board, the Gwich'in Tribal Council and the participating government agencies on the Working Group in a manner to be set out in the design of the Harvest Study.

FUNDING

It is acknowledged that adequate funding is required for the Harvest Study to yield meaningful data and that such funding must be identified before the study is initiated. The budget for the Harvest Study shall be set out in the implementation plan.

Schedule II to Chapter 12

The right of first refusal to purchase an enterprise pursuant to 12.7.6 shall operate as follows.

- (i) Where the owner of an enterprise wishes to sell the enterprise or any part thereof ("the asset"), the owner shall notify the Gwich'in Tribal Council in writing of the asset, the selling price of the asset, the terms of sale and any other relevant details and conditions which a reasonable, informed purchaser would require. The owner shall provide a reasonable opportunity to inspect the asset.
- (ii) The notification in (i) shall constitute an offer to sell the asset to the Gwich'in Tribal Council upon the terms and conditions specified in the notification.
- (iii) The Gwich'in Tribal Council shall have 30 days from the date of receipt of notification to indicate whether it wishes to exercise its right of first refusal.
- (iv) If it wishes to exercise the right of first refusal, the Gwich'in Tribal Council shall have 120 days from the date of receipt of notification to accept the offer after which time the offer shall lapse. The owner may extend the time in which the Gwich'in Tribal Council may accept the offer.
- (v) Where the Gwich'in Tribal Council notifies the owner that it does not intend to exercise its right of first refusal, fails to notify an owner of its intention within the time limit specified in (iii) or fails to meet the requirements in (iv), the right of first refusal shall lapse, and the owner shall be free, within three years of the lapse of the offer in (iv), to sell the asset to another person, provided that the selling price and any terms and conditions are at least equivalent to the price and terms and conditions offered to the Gwich'in Tribal Council in (ii).
- (vi) The owner may not sell the asset to a person other than the Gwich'in Tribal Council at a price less than the selling price or under significantly different terms and conditions than set out by the owner pursuant to (i) unless the owner sets a new selling price or new terms and conditions pursuant to (i). Where a new selling price or new terms and conditions are set pursuant to (i), the right of first refusal shall apply to such selling price and such terms and conditions in accordance with these provisions.
- (vii) Where the owner fails to sell the asset within three years of the lapse of the offer in (v), the owner may not sell the asset without a further notification pursuant to (i).
- (viii) Where the Gwich'in Tribal Council does not exercise its right of first refusal in respect of the purchase of all or part of an enterprise in (i), it shall not have a right of first refusal to take up a new licence issued in respect of the enterprise where such licence is associated with the sale of all or part of the enterprise pursuant to (v).

OATH OF MEMBER OF THE RENEWABLE RESOURCES BOARD

I do solemnly affirm (or swear) that I will faithfully, truly, impartially and honestly, and to the best of my judgement, skill and ability, execute and perform the duties required of me as a member of the Board.

13

FORESTRY

13.1.1

In this chapter,

"Board" means the Renewable Resources Board.

13.1.2

Subject to the provisions of this chapter, the Gwich'in have the right to harvest trees, including dead trees, throughout the settlement area at all seasons of the year for the following purposes:

- (a) firewood for personal use;
- (b) the construction of camps for hunting, trapping and fishing for personal use;
- (c) handicrafts and traditional, cultural and medicinal uses;
- (d) the construction of boats and rafts for personal uses; and
- (e) house building for personal use.

13.1.3

The Gwich'in right to harvest trees is subject to legislation in respect of forest management, land management within local government boundaries, conservation, public health, public safety and protection of the environment from significant damage.

13.1.4

The Gwich'in right to harvest trees set out in this agreement does not apply:

- (a) subject to 12.4.11(c), on lands held in fee simple, subject to an agreement for sale or surface lease;
- (b) upon Crown lands where it conflicts with the carrying out of any activity authorized or permitted by government such as a timber licence or land use permit;
- (c) in national parks except as permitted by the provisions of chapter 15; and
- (d) on lands described in 12.4.12(a).

13.1.5

The Gwich'in may dispose of harvested trees by way of trade with other Gwich'in for the purposes described in 13.1.2.

13.1.6

The commercial harvesting of trees throughout the settlement area is subject to legislation.

13.1.7

- (a) No new licence for the commercial harvesting of trees shall be granted without the consent of the affected Renewable Resources Council where such commercial harvesting would significantly affect the harvesting of wildlife by the Gwich'in.
- (b) The affected Renewable Resources Council shall be consulted by government prior to any change in the area of operation of an existing licence.
- (c) On application by an interested party, or on its own motion, the Board may review the decision of a Renewable Resources Council under (a) not to consent to such commercial harvesting and may permit such harvesting if the Board determines that it is reasonable, in the circumstances, to do so.

13.1.8

Nothing in this agreement shall be construed to:

- (a) confer rights of ownership of trees except on Gwich'in lands;
- (b) guarantee the supply of trees;
- (c) preclude persons who are not participants from harvesting trees on lands other than Gwich'in lands, subject to legislation; or
- (d) entitle the Gwich'in to any compensation for damage to or loss of trees or harvesting opportunities on lands other than Gwich'in lands.

13.1.9

The Board shall have the power to

- (a) establish policies and propose regulations in respect of
 - (i) the harvesting of trees by any person, including any class of persons; and
 - (ii) the commercial harvesting of trees; and
- (b) approve forest conservation and forest management plans and policies within the settlement area which may include
 - (i) determination of areas of commercial harvesting of trees and the terms and conditions of such harvesting which may include cutting rates, yields, reforestation measures and Gwich'in employment and training;
 - (ii) provisions for forest management agreements with licensees and owners; and
 - (iii) provision for the establishment of fire attack zones.

13.1.10

Government may consult the Board on any matter which affects forestry and forest management and shall seek the timely advice of the Board on the following matters:

- (a) draft legislation respecting forestry and forest management including the fighting and control of forest fires;
- (b) land use policies or draft legislation which will likely impact on forestry or forest management;
- (c) policies respecting forestry and forest management research and the evaluation of such research; and
- (d) plans for training Gwich'in in forestry, forest management and lumbering.

13.1.11

Nothing in this agreement is intended to affect the responsibility of government for the fighting of forest fires in the settlement area.

14

PLANTS

14.1.1 The Gwich'in may gather plant material for food, medicine, cultural and other personal purposes and for purposes required in the exercise of wildlife harvesting rights within the settlement area, subject to legislation in respect of conservation, land management within local government boundaries, public health, public safety and protection of the environment from significant damage.

14.1.2 The Gwich'in right to gather plants set out in this chapter does not apply:

- (a) subject to 12.4.11(c), on lands held in fee simple, subject to an agreement for sale or surface lease;
- (b) upon Crown lands where it conflicts with the carrying out of any activity authorized or permitted by government such as a timber licence or land use permit;
- (c) in national parks except as permitted by the provisions of chapter 15; and
- (d) on lands described in 12.4.12(a).

14.1.3 Government shall consult with the Gwich'in Tribal Council with respect to the gathering of plants by the Gwich'in before legislating to regulate or prohibit gathering of plants.

14.1.4 Any legislation which regulates but does not prohibit the gathering of plants shall provide a preferential right of gathering by the Gwich'in for food, medicine, cultural and other personal uses and for purposes required in the exercise of wildlife harvesting rights and may describe on which lands and under what conditions the preferential right shall apply.

14.1.5

- (a) The cultural purposes in 14.1.1 include the trade of plant material gathered by the Gwich'in with other aboriginal persons for their personal consumption.
- (b) In (a), "aboriginal persons" means aboriginal persons
 - (i) who reside in and who are eligible to harvest wildlife in the Northwest Territories; or
 - (ii) who are members of a Yukon First Nation and who reside in the Yukon.
- (c) Nothing in (a) is intended to confer any rights on any persons other than the Gwich'in.

14.1.6 Nothing in this agreement shall be construed to:

- (a) confer rights of ownership to plants except on Gwich'in lands;
- (b) guarantee the supply of any plants;
- (c) preclude persons who are not participants from gathering plants on lands other than Gwich'in lands, subject to legislation; or
- (d) entitle the Gwich'in to any compensation for damage to or loss of plants or gathering opportunities on lands other than Gwich'in lands.

15 NATIONAL PARKS

15.1 GENERAL

15.1.1 The purpose of national parks established in the settlement area is to preserve and protect for future generations representative natural areas of national significance, including the wildlife resources of such areas, and to encourage public understanding, appreciation and enjoyment of such areas, while providing for the rights of the Gwich'in under this agreement to use such areas for the harvesting of wildlife and plants.

15.1.2 Gwich'in wildlife harvesting rights and wildlife management provisions of this agreement shall apply in national parks in the settlement area, as modified by the provisions of this chapter.

15.1.3 The traditional and current use of lands within a national park by the Gwich'in shall be recognized in policies and public information programs and materials.

15.1.4 Park management plans and guidelines for national parks shall respect:

- (a) Gwich'in burial sites and places of religious and ceremonial significance; and
- (b) historic and archaeological sites.

15.1.5 Exploration for and development of minerals shall not be permitted within a national park, except as may be required for construction purposes within the park.

15.1.6 Except as otherwise provided in this agreement, all national parks in the settlement area shall be planned, established and managed pursuant to the *National Parks Act*, R.S. 1985, c. M-13, and other legislation, the national parks policy and park management plans in effect from time to time.

15.1.7 Once established, the boundaries of a national park shall not be reduced without the consent of the Gwich'in Tribal Council. The boundaries of a national park shall not be enlarged except by Order-in-Council, proclamation or legislation after consultation with the Gwich'in Tribal Council.

15.2 IMPACT AND BENEFIT PLANS

15.2.1 Prior to establishment of a national park in the settlement area, a Gwich'in Impact and Benefit Plan for the proposed park shall be jointly prepared by government and the Gwich'in Tribal Council for the approval of the Minister.

15.2.2 Impact and Benefit Plans shall address the impact of the establishment and development of the park on the affected Gwich'in community or communities in accordance with the provisions of this agreement and shall describe the steps that will be taken by government in the establishment of the park. In particular, the plan may include provisions relating to:

- (a) the National Park Management Committee ("the Committee") described in 15.3;
- (b) the continued use of Gwich'in camps, cabins and traditional travel routes to assist harvesting in the park;

- (c) economic and employment opportunities for the Gwich'in and measures which will be adopted to assist Gwich'in to take advantage of such opportunities, in accordance with the preference provided for in 15.7;
- (d) mitigation of potential negative impacts of park establishment on the affected Gwich'in community or communities; and
- (e) other matters of concern to government or the affected Gwich'in community or communities.

15.2.3 If the Gwich'in Tribal Council and government fail to reach agreement on a plan within a reasonable period of time for proposed parks, each party may submit its own plan to the Minister for his or her consideration and decision. The Minister shall give written reasons for a decision.

15.2.4 All plans shall contain provisions providing for a review of the plan not less than once every 10 years.

15.3 NATIONAL PARK MANAGEMENT COMMITTEES

15.3.1 A Committee shall be established for each national park in the settlement area at the time the park is established.

- (a) The Committee shall consist of equal numbers of members to be appointed by the appropriate Renewable Resources Council or Councils and by the Minister in consultation with the Government of the Northwest Territories. For each member appointed there shall be appointed an alternate member in the same manner.
- (b) Each member shall exercise one vote.
- (c) The Park Superintendent or his or her designate shall sit as an ex-officio, non-voting member.
- (d) The Committee shall choose from its members a chairperson who shall serve a fixed term and shall vote only in the event of a tie. The party who appointed the member who was selected as chairperson shall name a replacement on the Committee. If the Committee fails to agree on a chairperson within a reasonable period of time, the Minister shall select the chairperson from the Committee.
- (e) All appointments shall be for a fixed term. A member may be removed from office for cause by the authority responsible for his or her appointment.
- (f) The Committee may meet as often as necessary, but shall hold at least two meetings annually.
- (g) The Committee may establish its own rules of procedures respecting the conduct of its business.

15.3.3

The Committee may advise the Minister or the Minister's designate, the Renewable Resources Board or agencies of government, as appropriate, with respect to the following matters:

- (a) all matters affecting the national park which lie within the Renewable Resources Board's powers and responsibilities;
- (b) interim management guidelines, park management plans and any amendments to them;
- (c) park employment, training plans and economic opportunities for participants associated with the development and operation of the park;
- (d) any proposed changes to park boundaries;
- (e) issuance of permits for cabins or camps which may be required for the exercise of Gwich'in harvesting rights;
- (f) measures to give protection to sites, within the park, of cultural and spiritual significance to the Gwich'in and of archaeological significance;
- (g) information and interpretive programs to recognize Gwich'in traditional use of the park area;
- (h) research and field work conducted by or for government in a national park; and
- (i) any other matters which may be referred to the Committee by the Minister, the Renewable Resources Board or agencies of government.

15.3.4

The Minister shall advise the Committee in writing of reasons for rejection of any advice provided and afford the Committee an opportunity for further consideration of the matter.

15.4

PARK PLANNING AND MANAGEMENT

15.4.1

Interim management guidelines for a national park shall be prepared by the Canadian Parks Service, in consultation with the Committee, within two years of establishment of a national park.

15.4.2

A park management plan shall be prepared by the Canadian Parks Service in consultation with the Committee within five years of establishment of a national park, and shall be reviewed and revised as required from time to time and not less than every 10 years.

15.4.3

Park management plans shall be approved by the Minister prior to coming into force.

15.4.4

To the extent feasible, interim management guidelines and park management plans shall be prepared in the settlement area.

15.4.5

Park management plans shall describe the policies which guide the conservation and management of the park and its resources.

15.5 WILDLIFE

15.5.1 National parks shall be managed in a manner which provides for wildlife harvesting by the Gwich'in, consistent with the protection of wildlife habitat, the maintenance of viable wildlife populations, and the natural evolution of ecosystems and their associated plant and animal species, as well as public use and enjoyment of the national parks.

15.5.2 Wildlife management within national parks shall be compatible with wildlife management in surrounding areas to the extent possible, consistent with national parks objectives and policies.

15.5.3 Except for the harvesting of fur bearers, the harvesting of wildlife within national parks by the Gwich'in shall be limited to the personal use of participants or for trade with other participants for their personal use or to other aboriginal persons referred to in 12.4.16 for their personal use.

15.5.4 Permits may be required for the location of cabins and camps required for the exercise of Gwich'in harvesting rights; such cabins and camps shall conform to interim management guidelines and park management plans. Permits shall be issued by the Park Superintendant without charge.

15.5.5 Sport fishing may be permitted, subject to the provisions of chapter 12. Subject to 15.5.3, hunting shall not be permitted in any national park.

15.5.6 Any allocation of Gwich'in harvesting rights among individual harvesters shall be the responsibility of the appropriate Renewable Resources Council.

15.5.7 Persons who are not participants and who:

- (a) held General Hunting Licences at the date of settlement legislation and lawfully harvested wildlife; or
- (b) otherwise lawfully harvested wildlife for subsistence purposes;

in the area comprised by a park at the time of its establishment, and the children of such persons, may continue to harvest wildlife after the establishment of the park, if permitted by and in accordance with the *National Parks Act*, R.S. 1985, c. M-13.

15.6 PLANTS AND TREES

15.6.1 The Gwich'in may gather plant material for food, medicine, cultural and other personal purposes and for purposes required in the exercise of wildlife harvesting rights within the park subject to park management plans and to legislation in respect of conservation, public health, public safety and protection of the environment from significant damage. This right includes the cutting of trees for construction and maintenance of cabins and camps and for fuel.

15.7

ECONOMIC AND EMPLOYMENT PROVISIONS

15.7.1

The parties intend that qualified participants will hold a majority of jobs in national parks in the settlement area. To this end, training opportunities, as described in the Impact and Benefit Plan, shall be provided to assist Gwich'in to qualify for such employment.

15.7.2

To the extent that commercial and economic activities related to wildlife and tourism may be permitted in national parks, the Gwich'in Tribal Council shall have the right of first refusal to any new licences to carry on such activities and to take up licences in force at the date of settlement legislation that are not renewed, as provided in this agreement.

15.7.3

In the event that manipulation of wildlife populations by way of a controlled hunt is required in a national park within the settlement area, the Gwich'in shall be given the preferential right to conduct the hunt in co-ordination with park officials, and to dispose of wildlife parts and products resulting therefrom outside the park, in accordance with this agreement.

16 PROTECTED AREAS

16.1 GENERAL

16.1.1 In this chapter,

"territorial park" means an area dedicated as a recreation park under 4(1)(a) and (b) of the *Territorial Parks Act*, R.S.N.W.T. 1988, c. T-4, and any other territorial park outside local government boundaries the area of which exceeds 130 hectares (approximately 321 acres).

16.1.2 Except as otherwise provided in this agreement, protected areas shall be planned and managed pursuant to legislation respecting protection of the resources in the protected areas.

16.1.3 Except as otherwise provided in this chapter, the provisions of chapters 12, 13 and 14 apply in any protected area established in the settlement area.

16.2 PLANNING AND MANAGEMENT

16.2.1 (a) Government shall consult with the Gwich'in Tribal Council and with affected local communities prior to the establishment of any protected area, or changes in the boundaries of an established protected area. Such consultation shall commence not less than 12 months prior to the establishment of the protected area or the change in boundaries.

(b) In an emergency for reasons of conservation, such consultation may take place in a shorter period. In the event of an emergency for reasons of conservation which requires immediate government action, government shall consult with the Gwich'in Tribal Council as soon as possible after the establishment of a protected area on the necessity of the action and the terms and conditions attached thereto.

16.2.2 The Government of the Northwest Territories shall consult with the Gwich'in Tribal Council prior to the establishment of any territorial park which is not included in the definition of territorial park under this chapter.

16.2.3 The Government of the Northwest Territories may prepare a park management plan for each territorial park which describes the policies which will guide the conservation and management of the park and its resources. The Gwich'in Tribal Council shall be invited to participate in the preparation of any plan. A park management plan shall be approved by the Minister before coming into force. Gwich'in use shall be in accordance with the applicable interim management guidelines or park management plan.

16.2.4 Any allocation of Gwich'in harvesting rights among participants in protected areas shall be the responsibility of the appropriate Renewable Resources Council.

16.2.5 The harvesting of wildlife, plants and trees by the Gwich'in may be restricted in protected areas or parts of protected areas for conservation or other reasons as set out in chapters 12, 13 and 14 or related to the management of the protected area. Any proposed restrictions shall be included in a protected area agreement dealing with impacts and benefits to be negotiated between the affected Gwich'in communities and government. In the event that a protected area agreement is not concluded within two years of the commencement of negotiations, each party may submit its own proposal to the Minister responsible for the protected area for consideration and decision. The Minister shall give written reasons for a decision.

16.2.6 The protected area agreement may include provisions relating to:

- (a) employment of Gwich'in;
- (b) training of Gwich'in;
- (c) protection of Gwich'in religious, cultural and historic sites;
- (d) mitigation of potential negative impacts of the establishment of the protected area on affected Gwich'in harvesters and their communities;
- (e) participation of the Gwich'in in management committees or other similar structures relating to the development and administration of the protected area;
- (f) any interim management guidelines or management plan;
- (g) periodic review of the protected area agreement not less than once every 10 years;
- (h) the continued use of Gwich'in camps and traditional travel routes to assist harvesting and other traditional uses; and
- (i) other matters of concern to the affected Gwich'in communities and government.

16.2.7 It is the objective of the parties that qualified Gwich'in be employed at all occupational levels in protected areas. Government shall identify employment opportunities in respect of the management and administration of protected areas and shall provide appropriate training opportunities for the Gwich'in as set out in the Implementation Plan. For any protected area established after the date of settlement legislation, the nature and extent of the training opportunities shall be set out in the protected area agreement.

16.2.8 To the extent that outfitting, guiding and naturalist commercial activities, including tourist establishments related to such activities and facilities for the manufacture or sale of handicrafts, may be permitted in protected areas, the Gwich'in Tribal Council shall have the right of first refusal to any new licences to carry on such activities and to take up licences in force at the date of settlement legislation that are not renewed and are available. The procedures set out in 12.7.5(b) shall apply, where appropriate, to such right with such modifications as the circumstances require.

16.2.9 To the extent that commercial wildlife activities including commercial harvesting are permitted in protected areas, the Gwich'in Tribal Council shall have the right of first refusal to any new licence for such activities. The procedures set out in 12.7.2 or 12.7.5(b) shall apply, where appropriate, to such right with such modifications as the circumstances require.

16.2.10 In the event that manipulation of wildlife populations is required in a protected area, the Gwich'in Tribal Council shall be given the first opportunity to conduct the hunt and to dispose of wildlife parts and products resulting therefrom in accordance with a plan to be approved by officials responsible for the protected area.

16.3 CAMPBELL HILLS/LAKE

16.3.1 (a) The Government of the Northwest Territories and the Gwich'in Tribal Council have entered into a Memorandum of Agreement with respect to the proposed territorial park at Campbell Hills/Lake.

(b) The Memorandum of Agreement shall be a protected area agreement within the meaning of this chapter, in the event that this park is established. However, any financial obligations of government arising from the Memorandum of Agreement, including the costs of establishing, operating and maintaining the Park, and the costs of any benefits to Gwich'in, shall not be a cost of implementing this agreement.

17

HARVESTING COMPENSATION

17.1.1

In this chapter,

"compensation" means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of participants or equipment to a different harvesting locale or a combination of such elements;

"development activity" means a development activity in the settlement area, other than individual or commercial wildlife harvesting activities, naturalist activities and commercial guiding and outfitting activities in respect to hunting and sport fishing; and

"wildlife harvesting" means wildlife harvesting pursuant to this agreement and does not include wildlife harvesting permitted pursuant to legislation other than legislation giving effect to this agreement.

17.1.2

(a) A developer is liable absolutely, without proof of fault or negligence, for the following losses and damage suffered by a participant as a result of development activity of that developer:

- (i) loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested;
- (ii) present and future loss of income from wildlife harvesting; and
- (iii) present and future loss of wildlife harvested for personal use or which is provided by the participant to other participants for their personal use; and

(b) notwithstanding (a), a developer shall not be liable for losses suffered by a participant as a result of the establishment of a national park or a protected area, or any lawful activity within a park or protected area, except for direct loss or damage to property or equipment used in wildlife harvesting or to wildlife harvested.

17.1.3

Participants shall make their best efforts to mitigate any losses or damage referred to in 17.1.2.

17.1.4

If agreement has not been reached between a developer and a participant with respect to a claim for compensation within 30 days of the submission of a claim in writing by a participant, either party may refer the matter to arbitration pursuant to chapter 6.

17.1.5

An arbitrator, if a claim is proven, may:

- (a) award compensation to a participant with provision for review of the award, if appropriate;
- (b) recommend that a developer or a participant take or refrain from taking certain action in order to mitigate further loss or damage; and
- (c) on review of a previous award, determine whether the developer or the participant has adopted any mitigative recommendations made under that previous award.

17.1.6 Nothing in this chapter is intended to prejudice the legal rights of participants to sue for damages from any person. However, if a participant elects to refer the dispute to arbitration, the provisions of chapter 6 shall apply.

17.1.7 Nothing in this chapter is intended to prejudice the negotiation of agreements between the Gwich'in and developers with respect to compensation for losses in relation to wildlife harvesting, including the process for settling and resolving claims under this chapter.

17.1.8 Legislation may provide for limits of liability of developers, the burden of proof on claimants, limitation periods for making claims and any other matters not inconsistent with this agreement.

18 GWICH'IN LANDS

18.1 GWICH'IN TITLE

18.1.1 In this chapter,

"lands" does not include water; and

"specified substances" means carving stone, clay, construction stone, diatomaceous earth, earth, flint, gravel, gypsum, limestone, marble, marl, ochre, peat, sand, shale, slate, sodium chloride, soil and volcanic ash.

18.1.2 The Gwich'in shall receive title, which may be referred to as "Gwich'in title", to settlement lands as follows:

- (a) 16,264 square kilometres (approximately 6,280 square miles) of lands in fee simple, reserving therefrom the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands and the right to work the same, subject to any rights, titles or interests in the lands existing at the date of settlement legislation;
- (b) 4,299 square kilometres (approximately 1,660 square miles) of lands in fee simple, including the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands, subject to any rights, titles or interests in the lands existing at the date of settlement legislation; and
- (c)
 - (i) 1,766 square kilometres (approximately 682 square miles) of lands in fee simple, including the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands, and
 - (ii) 93 square kilometres (approximately 36 square miles) of lands wherein the interest shall include title only to the mines and minerals underlying such lands but not to the surface thereof,

("the Aklavik Lands"), subject to any rights, titles or interests in the lands existing at the date of settlement legislation.

18.1.3 Unless otherwise provided in the legal description,

- (a) Gwich'in title shall include title to those portions of the beds of lakes, rivers and other water bodies contained within the described boundaries of Gwich'in lands, and
- (b) Gwich'in title shall not include title to the bed of any lake, river or other water body where any lake, river or water body is described as a boundary of Gwich'in lands.

18.1.4 (a) Title to Gwich'in lands, other than lands in (b), shall vest in the Gwich'in Tribal Council by virtue of settlement legislation at the date thereof.

(b) Title to Gwich'in municipal lands acquired from persons other than government shall vest in the Gwich'in Tribal Council at the date the land is conveyed.

18.1.5 Settlement lands may not be conveyed to any person except to government in exchange for other lands or to a designated Gwich'in organization. This provision shall not be interpreted to prevent the Gwich'in from granting leases or licences to persons who are not participants to use or occupy Gwich'in lands.

18.1.6 Subject to the provisions of this agreement and legislation, the Gwich'in shall manage and control the use of Gwich'in lands, including:

- (a) the development and administration of land management programs and policies; and
- (b) the charging of rents or other fees for the use and occupation of Gwich'in lands.

18.1.7 Settlement lands are not subject to seizure or sale under court order, writ of execution or any other process whether judicial or extra-judicial.

18.1.8 Settlement lands shall not be mortgaged, charged or given as security.

18.1.9 No person may acquire, by prescription, an estate or interest in settlement lands.

18.1.10 Canada is discharged from any obligations arising from the Memorandum of Agreement Regarding Overlap Resolution Between the Inuvialuit, Dene/Metis, and Canada dated February 9, 1984 upon transfer of lands pursuant to 18.1.2(c).

18.2 SPECIFIED SUBSTANCES

18.2.1 Notwithstanding the reservation of mines and minerals from the lands described in 18.1.2(a), and subject to any specific reservation in the grant, Gwich'in title shall include the right to specified substances and the right to work such substances.

18.2.2 Notwithstanding 18.2.1,

- (a) the right of the Gwich'in to work specified substances is subject to the rights of a person having a mineral interest. A person having a mineral interest shall, where practicable, exercise that interest so as to minimize interference with the right of the Gwich'in to work specified substances;
- (b) no compensation, other than that determined pursuant to 26.2.1(d) and (e), shall be paid to the Gwich'in in respect of any specified substance incidentally taken, used, damaged or destroyed by a person in the course of exercising mineral rights, and any such specified substance taken, used, damaged or destroyed shall be the property of the person exercising the mineral rights; and
- (c) notwithstanding (b), the property described in (b) of a holder of a mineral interest in specified substances shall terminate upon termination of the mineral interest.

18.2.3 (a) The Gwich'in shall provide supplies of, and permit access to, sand, gravel, clay and other like construction materials on Gwich'in lands if, in the opinion of the Land and Water Board, no alternative source of supply is reasonably available in the surrounding area.

- (b) The Gwich'in are entitled to fair and reasonable compensation for any materials supplied under (a).
- (c) If any person or government, and the Gwich'in, do not agree on any terms or conditions respecting the supply of, or access to, materials under (a), the person or government seeking the supply or access may refer the matter to the Land and Water Board which shall decide all matters between the parties including the question of priorities between the Gwich'in and other users. The decision of the Land and Water Board shall be final and binding on the parties and shall not be challenged by appeal or review in any court except on the ground that the Board erred in law or exceeded its jurisdiction.
- (d) The Land and Water Board may establish rules and procedures for the carrying out of this provision.

18.2.4 Government shall have the right to take sand and gravel without charge from the Gwich'in lands identified in (a) and (b) and shall have free access to reach such sites for that purpose for a period of 20 years from the date of settlement legislation:

- (a) deposit known as the Frog Creek source located at Lat. 67° 34'N, Long. 134° 04'W (approximately) within parcel 27; and
- (b) deposit located at Lat. 67° 28'N, Long. 133° 45'W (approximately) within parcel 16.

18.3 LAND SELECTION AND REGISTRATION

18.3.1 (a) Legal descriptions of the lands selected in accordance with this agreement are set out in schedules I to III, appendix F.

(b) Locations of specific sites of Gwich'in lands are set out in schedule IV of appendix F.

(c) The maps which form part of the legal descriptions in (a) are recorded in the Canada Lands Surveys Records, Department of Energy, Mines and Resources, Ottawa, as number 74198 C.L.S.R.

18.3.2 Canada shall make available to the Gwich'in Tribal Council data and information relating to resources and to existing rights, titles and interests on Gwich'in lands as soon as practicable after the date of settlement legislation.

18.3.3 (a) Unless otherwise agreed by the parties, hazardous waste sites identified as such at the time of land selection shall not be vested in the Gwich'in. Identified hazardous waste sites are set out in schedule XVIII, appendix F.

(b) In (a), "hazardous waste sites" are sites on which toxic substances are stored or disposed of, as defined in part II, section 11, *Canadian Environmental Protection Act*, R.S. 1985, c. 16 (4th supp.).

18.3.4 Where government undertakes any program respecting the clean-up of hazardous waste sites on Crown lands in the settlement area, such program shall apply to hazardous waste sites on Gwich'in lands existing at the date of settlement legislation, whether or not identified at that time, and government shall be responsible for the costs associated with such clean-up on Gwich'in lands. This provision shall not prevent government from recovering any such costs from a person made liable for these costs pursuant to legislation.

18.3.5 (a) Title to Gwich'in lands vested pursuant to **18.1.4** shall be registered by the Northwest Territories Land Titles Office. In order to facilitate registration and subsequent recording of transactions, title shall be registered in as many discrete parcels as considered necessary by the Registrar of Land Titles.

(b) Legal descriptions, as specified in **18.4.1**, shall be used for the purpose of registering title to settlement lands.

(c) Wherever surveys of Gwich'in lands are required, these surveys shall be registered by the Northwest Territories Land Titles Office and become the legal description for that portion of the parcel boundary, replacing the initial legal description referred to in (b).

18.4 BOUNDARIES AND SURVEYS

18.4.1 (a) Legal descriptions, including the area, of each parcel agreed upon in land selection, shall be prepared by Canada and approved by the Gwich'in Tribal Council. Approval of the legal description of parcels shall be confirmation that the parties agree the parcels described are the ones selected and the area calculations are satisfactory.

(b) The document containing the legal description may specify features which the parties agree should be enclosed within or excluded from a parcel of Gwich'in lands. Where any subsequent legal survey of the land indicates that the legal description failed to include or exclude, as the case may be, the feature intended to be included or excluded, the legal description shall be amended to so include or exclude that feature.

(c) The boundaries of Gwich'in lands shall be surveyed when, in the opinion of government, such surveys are required to avoid or resolve conflicts with another title or interest holder, and may otherwise be surveyed at government's discretion.

18.4.2 (a) Boundary surveys shall be conducted, and monuments placed, in accordance with the instructions of the Surveyor General and the *Canada Lands Survey Act*, R.S. 1985, c. L-6.

(b) The Government of Canada shall be responsible for the cost of the legal surveys which may be required pursuant to **18.4.1(c)** to define the boundaries of Gwich'in lands provided that this provision shall not prevent government from levying charges in respect of such surveys on any person whose lands abut Gwich'in lands.

(c) Subject to (b), the Gwich'in Tribal Council shall be responsible for the cost of surveys associated with the leasing and subdivision of Gwich'in lands.

- (d) The boundaries of settlement lands shall be described with reference to geographical features and degrees of latitude and longitude as shown on National Topographic Survey maps at 1:50,000 scale, where available, or at 1:250,000 scale. The boundaries of Gwich'in municipal lands shall be described with reference to features shown on the maps provided pursuant to 4.1(b) and (d) of appendix D. To the extent possible, the descriptions shall refer to existing monumentation.
- (e) The boundaries of Gwich'in lands may be defined by existing legal surveys and natural and artificial boundaries including offset boundaries and rights of way, but shall, to the extent possible, be defined by existing boundary-survey traverses or by reference to natural features such as banks of rivers and lakes and well-defined heights of land for determining surveying points, with preference being given to natural boundaries.
- (f) Natural boundaries at any instant correspond to the position of the designated natural feature as it exists at that instant. The position of the natural boundaries changes with the movements of the natural features as long as these movements are gradual and imperceptible from moment to moment. Offset natural boundaries also move according to the natural movement of the natural features.
- (g) Where a natural boundary is a height of land which is subsequently found to be not well-defined, the Surveyor General shall have the authority to place a series of monuments, approximating the mean position of the height of land, to be the boundary.
- (h) Maps of the portions of a right of way that are used as the boundary of Gwich'in lands shall be filed by government with the Surveyor General. Those portions of the right of way used as a boundary shall be surveyed within four years of the date of this agreement.

18.5 ADMINISTRATION OF INTERESTS

- 18.5.1
 - (a) Any royalties or non-refunded rents accruing to and received by government after the date of this agreement in respect of an interest in lands which becomes a Gwich'in interest at the date of settlement legislation, not including any amounts paid pursuant to (b), shall be accounted for by government and an equal amount paid to the Gwich'in Tribal Council as soon as practicable after the date of settlement legislation.
 - (b) Any payments received by Canada from holders of interests in the Aklavik Lands between May 17, 1984 and the date of settlement legislation, other than payments which Canada is obligated to refund to such interest holders, shall be accounted for by government and an equal amount paid to a designated Gwich'in organization as soon as practicable after the date of settlement legislation.
 - (c) Canada shall pay to a designated Gwich'in organization, as soon as practicable after the date of settlement legislation, a royalty for each cubic yard of sand, gravel, clay and other like construction material removed from the Aklavik Lands between May 17, 1984 and the date of settlement legislation, such royalty to be calculated as \$0.75 per cubic yard multiplied by (b divided by a), where "a" shall mean the Gross National Product of Canada in current dollars for the year 1982, and where "b" shall mean the Gross National Product of Canada in current dollars for the year previous to the year in which the royalties are being charged.

18.5.2 Where lands to which the Gwich'in receive title pursuant to **18.1.2(b)** or **(c)** are subject to a mineral interest existing at the date of settlement legislation:

- (a) government shall continue to administer such interest including the granting of and administration of renewals, replacements, extensions of term or transfers thereof in accordance with applicable legislation as if the interest were on Crown lands until such time as the interest ceases to exist;
- (b) government shall notify the Gwich'in Tribal Council of any change in such interest which affects the Gwich'in as title-holder; and
- (c) after the date of settlement legislation, any royalties or non-refunded rents accruing to and received by government from the holder of a mineral interest shall be accounted for by government and an equal amount paid to the Gwich'in Tribal Council as soon as practicable from time to time.

18.5.3 Amounts received by government described in **18.5.1** and **18.5.2(c)** or a similar provision in other comprehensive land claim agreements in the Mackenzie Valley shall not be calculated as amounts received by government for the purpose of **9.1.2**.

18.5.4 Government shall be under no fiduciary obligation to the Gwich'in in respect of its administration of mineral interests apart from its obligation to account in **18.5.2(c)**. In particular, government may, subject to **9.1.3**, set royalties, rents and other charges and make other discretionary decisions on the basis of government's resource management policy.

19

WATER RIGHTS AND MANAGEMENT

19.1.1

In this chapter,

"compensation" means a cash payment, either lump sum or a periodic payment, or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of participants or equipment to a different harvesting locale or a combination of such elements.

19.1.2

Nothing in this chapter is intended to give authority to any person to take or damage Gwich'in lands except in accordance with this agreement.

19.1.3

- (a) Subject to the provisions of this agreement, the Gwich'in have the exclusive right to use waters which are on or flow through Gwich'in lands when such waters are on or flowing through Gwich'in lands.
- (b) Gwich'in use of water is subject to legislation in respect of water use.

19.1.4

Government and persons who are not participants having a right or interest in respect of Gwich'in lands the exercise of which requires the use of water, shall have the right to use the water, subject to this agreement and legislation in respect of water use.

19.1.5

Notwithstanding Gwich'in ownership of beds of certain water bodies, government retains the right to protect and manage water and beds of water bodies, and to use water in connection with such right, throughout the settlement area for public purposes including:

- (a) management and research in respect of wildlife, and wildlife and aquatic habitat;
- (b) protection and management of navigation and transportation, establishment of navigation aids and devices, and dredging navigable water bodies;
- (c) protection of water supplies including community water supplies from contamination and degradation;
- (d) fighting fires;
- (e) flood control; and
- (f) research and sampling with respect to water quality and water quantity.

19.1.6

Unless otherwise provided for in legislation, the Gwich'in right to use water shall not interfere with or take away from:

- (a) rights of navigation and passage on water;
- (b) use of water for emergency purposes; or
- (c) any right of access associated with a right to fish or to hunt migratory game birds.

19.1.7 (a) Nothing in this agreement shall be construed as granting the Gwich'in property rights in respect of water.

(b) The property in water in the settlement area may be determined by legislation in respect of water.

19.1.8 Subject to legislation in respect of the use of water:

(a) the Gwich'in have the right to have waters which are on or flow through or are adjacent to Gwich'in lands remain substantially unaltered as to quality, quantity and rate of flow when such waters are on or flow through or are adjacent to Gwich'in lands; and

(b) the Gwich'in shall not use water so as to substantially alter the quality, quantity and rate of flow of waters which are on or flow through or are adjacent to Gwich'in lands.

19.1.9 The Gwich'in have a cause of action against any person in respect of any action or use of water not authorized by law, which substantially alters the quality, quantity or rate of flow of waters which are on or flow through or are adjacent to Gwich'in lands, with such remedies as if the Gwich'in had riparian rights.

19.1.10 The Gwich'in Tribal Council shall have standing at all times in a court of competent jurisdiction to seek a declaration of the authority of any person to alter the quality, quantity or rate of flow of water in the settlement area.

19.1.11 (a) Government shall use its best efforts to negotiate agreements with other jurisdictions which manage drainage basins shared with the settlement area for the management of water in the shared drainage basin.

(b) Government shall consult with the Gwich'in Tribal Council with respect to the formulation of government positions on the management of water in a shared drainage basin before negotiating an agreement pursuant to (a).

19.1.12 Nothing in this agreement shall derogate from the ability of any person to use water for domestic uses as provided in legislation.

19.1.13 Subject to legislation, the Gwich'in have the right to use water without licence or permit for trapping and non-commercial harvesting of wildlife, including transportation relating thereto, or for traditional heritage, cultural and spiritual purposes.

19.1.14 The Land and Water Board shall not grant a licence, permit or authorization that interferes with the rights of the Gwich'in in 19.1.8 unless the Board considers that:

(a) there is no alternative which could reasonably satisfy the requirements of the applicant, and

(b) there are no reasonable measures whereby the applicant could avoid the interference.

19.1.15 No water use anywhere in the settlement area which, in the opinion of the Land and Water Board, will likely substantially alter the quality, quantity or rate of flow of waters on or flowing through or adjacent to Gwich'in lands, when such waters are on or flowing through or adjacent to Gwich'in lands, shall be authorized by the Land and Water Board unless the applicant for the authorization has entered into an agreement with the Gwich'in Tribal Council to compensate the Gwich'in for loss or damage which may be caused by such alteration, or the Land and Water Board has made an order for compensation under **19.1.16(a)**.

19.1.16

- (a) If the Gwich'in Tribal Council and the applicant for a water-use authorization described in **19.1.15** or **19.1.18** do not reach an agreement on compensation within the time limit established by the Land and Water Board, either party may refer the matter of compensation to the Board and the Board shall determine compensation.
- (b) Notwithstanding **19.1.15** and **19.1.18**, the Land and Water Board may authorize a water use described in **19.1.14** and the competent water authority may authorize a water use described in **19.1.18** prior to the Land and Water Board making an order under (a).

19.1.17 In determining the amount of compensation payable to the Gwich'in in respect of a water use described in **19.1.15** or **19.1.18**, the Land and Water Board shall consider:

- (a) the effect of the water use on Gwich'in use of water on or adjacent to Gwich'in lands;
- (b) the effect of the water use on Gwich'in lands, taking into account any cultural or special value of the lands to the Gwich'in;
- (c) the nuisance, inconvenience and noise caused by the water use to the Gwich'in on Gwich'in lands;
- (d) the effect on wildlife harvesting by the Gwich'in; and
- (e) subject to legislation, such other factors as the Land and Water Board may consider relevant.

19.1.18 Where a water use is proposed outside the settlement area, but within the Northwest Territories, which, in the opinion of the Land and Water Board, will likely substantially alter the quality, quantity or rate of flow of water on or through or adjacent to Gwich'in lands, when such waters are on or flowing through or are adjacent to Gwich'in lands, the water use shall not be authorized by the competent water authority unless the applicant for the water use has entered into an agreement with the Gwich'in Tribal Council under **19.1.15** or the Land and Water Board has made an order under **19.1.16(a)**.

20 ACCESS

20.1 GENERAL

20.1.1 In this chapter,

"Gwich'in lands" means settlement lands and parcels of Gwich'in municipal lands which are larger than four hectares (approximately 10 acres) and which are not developed Gwich'in municipal lands as defined in **22.4.1**.

20.1.2 Except as provided in this chapter, persons who are not participants may only enter, cross or stay on Gwich'in lands and waters overlying such lands with the agreement of the Gwich'in Tribal Council. Any person, other than a person exercising rights pursuant to **20.3.1** or **20.3.3**, who contravenes any provision of this chapter shall be considered to be a trespasser.

20.1.3 Access of persons who are not participants to or across:

- (a) parcels of developed Gwich'in municipal lands,
- (b) parcels of Gwich'in municipal lands which are not larger than four hectares (approximately 10 acres) and which are not developed Gwich'in municipal lands, or
- (c) waters overlying land in (a) and (b),

is governed only by laws of general application.

20.1.4 Unless otherwise provided in an agreement with the Gwich'in Tribal Council, the exercise of access provided in **20.2**, **20.3.1**, **20.4.2**, **20.4.3**, **20.4.5** and **20.4.6(b)** is subject to the following conditions:

- (a) there be no significant damage to Gwich'in lands, and the user shall be responsible for any such damage;
- (b) there be no mischief committed on Gwich'in lands; and
- (c) there be no significant interference with Gwich'in use of and peaceable enjoyment of Gwich'in lands.

20.1.5 Unless otherwise provided in an agreement with the Gwich'in Tribal Council, persons using a right of access to or across Gwich'in lands and waters overlying such lands do so at their own risk and have no right of action against the Gwich'in for alleged loss suffered or damage arising therefrom.

20.1.6 Unless otherwise provided by legislation enacted after consultation with the Gwich'in Tribal Council, there shall be no fee or charge attached to the exercise of access provided in **20.2**, **20.3.1**, **20.3.5**, **20.3.6**, **20.4.1(a)**, **20.4.2**, **20.4.3**, **20.4.5** and **20.4.6(b)**.

20.1.7 (a) The Gwich'in Tribal Council may propose terms and conditions, other than fees or charges, for the exercise of access pursuant to **20.2**, **20.3.1**, **20.4.2** or **20.4.3**, in accordance with the following:

- (i) the Gwich'in Tribal Council shall consult with government and attempt to reach agreement on the proposed terms and conditions,
- (ii) if agreement cannot be reached, the Gwich'in Tribal Council or the government may refer the matter to arbitration pursuant to chapter 6, and
- (iii) conditions may not be imposed in relation to law enforcement or inspections authorized by law,

but may not otherwise establish terms or conditions for the exercise of access rights pursuant to this chapter. This provision is not intended to restrict the establishment of any terms and conditions agreed to by a person to whom such terms or conditions would apply.

(b) Terms and conditions pursuant to (a) may include the identification of areas, locations, seasons or times in respect of which such access is restricted by reason of the protection of the environment; conflict with Gwich'in harvesting or other Gwich'in uses of land; conservation of wildlife and wildlife habitat; protection of Gwich'in communities and camps; and requirements for notice or registration by persons exercising such access.

20.1.8 Any person may enter and stay on Gwich'in lands and waters overlying such lands without prior notice in an emergency.

20.1.9 The rights provided in this chapter for persons who are not participants are subject to legislation.

20.1.10 Where a person has a right of access pursuant to more than one provision in this chapter, that person may have access pursuant to the least restrictive applicable provision.

20.1.11 Subject to restrictions that may be imposed pursuant to this agreement or by legislation, a person may exercise a right of access by any mode of transport.

20.2 PUBLIC ACCESS

20.2.1 (a) Members of the public have the right to use:

- (i) navigable rivers and other navigable waters that can be entered from such rivers where such waters overlie Gwich'in lands;
- (ii) portages on Gwich'in lands associated with navigable rivers and other navigable waters that can be entered from such rivers; and
- (iii) waterfront lands within Gwich'in lands associated with navigable rivers and other navigable waters that can be entered from such rivers,

for travel by water or for recreation, but these rights do not include the right to harvest wildlife except in accordance with **20.2.2** or to engage in any commercial activity or to

establish any permanent or seasonal camp or structure on the lands to which such rights apply, or to travel by motorized vehicle on such waterfront lands.

- (b) Locations where the rights of access in (a)(ii) and (iii) are restricted are set out in schedule IX, appendix F.
- 20.2.2 (a) Members of the public may fish in navigable waters overlying Gwich'in lands identified in schedule X, appendix F, and may have access to these waters and to the associated waterfront lands to exercise this right. Members of the public may use the portages and waterfront lands identified in schedule X, appendix F, to exercise a right to fish.
 - (b) Members of the public may hunt migratory game birds in navigable waters overlying Gwich'in lands identified in schedule XI, appendix F, and may have access to these waters and to the associated waterfront lands to exercise this right. Members of the public may use the portages and waterfront lands identified in schedule XI, appendix F, to exercise a right to hunt migratory game birds.
 - (c) The rights in (a) and (b) do not include the right to engage in any commercial activity or to establish any permanent or seasonal camp or structure on the lands to which such rights apply.
- 20.2.3 (a) Members of the public may cross Gwich'in lands and waters overlying such lands to exercise a right, interest or privilege on adjacent lands or waters, such as to go to or from their place of work or to or from a place of recreation. Where practicable, such crossings shall take place either on routes designated by the local designated Gwich'in organization or upon prior notice to it.
 - (b) Where any person has a right, title or interest in lands which are, or are surrounded by, Gwich'in lands as of either the date of land withdrawal following land selection or the date of transfer of land where no prior withdrawal takes place, such right, title or interest shall include a right of access across Gwich'in lands and waters overlying such lands to allow the continued use of the right, title or interest.
- 20.2.4 With the agreement of the Gwich'in Tribal Council, persons conducting research may enter, cross and stay on Gwich'in lands for a reasonable time to conduct research.
- 20.3 GOVERNMENT ACCESS
- 20.3.1 Agents, employees, contractors of government and members of the Canadian Armed Forces shall have the right to enter, cross and stay on Gwich'in lands and waters overlying such lands and to use natural resources incidental to such access to deliver and manage government programs and services, to carry out inspections pursuant to law and to enforce laws. Government shall give prior notice of such access to the Gwich'in Tribal Council when, in the opinion of government, it is reasonable to do so.
- 20.3.2 If government requires the continuous use or occupancy of Gwich'in lands for more than two years, such use or occupancy shall be on terms negotiated between government and the Gwich'in Tribal Council. Failing agreement on the terms, the matter shall be referred to arbitration pursuant to chapter 6.

20.3.3 (a) In addition to access provided by 20.3.1, the Department of National Defence and the Canadian Armed Forces may have access to Gwich'in lands and waters overlying such lands for military manoeuvres after the negotiation of an agreement with respect to contact persons, areas, timing, land use rent, compensation for damages caused to lands or property, and any other matter. If an agreement is not reached, the parties may refer the matter of the terms of the agreement to arbitration pursuant to chapter 6.

(b) Nothing in (a) is intended to limit the authority of the Minister of National Defence pursuant to s.257 of the *National Defence Act*, R.S. 1985, c. N-5.

20.3.4 Government shall give reasonable advance notice of military exercises or operations to local inhabitants of any area to be affected in the settlement area.

20.3.5 Notwithstanding 20.3.2, government may establish, on Gwich'in lands, after consultation with the Gwich'in Tribal Council, navigational aids and safety devices along the shorelines of navigable waters provided that the area occupied by each such navigation aid or safety device shall not exceed:

(a) two hectares (approximately five acres), for range markers and buoy transits; and

(b) 30.48 metres (100 feet) by 30.48 metres (100 feet), for single beacons.

20.3.6 (a) Any person authorized by legislation to provide to the public electrical power, telecommunications services or similar public utilities, not to include pipelines for the transmission of hydrocarbons, shall have access to Gwich'in lands and waters overlying such lands to carry out assessments, surveys and studies in relation to proposed services. Such persons shall consult with the Gwich'in Tribal Council prior to exercising such access.

(b) Where access under (a) results in damage to Gwich'in lands or interference with Gwich'in use of and peaceable enjoyment of Gwich'in lands, such person shall compensate the Gwich'in in an amount agreed to by that person and the Gwich'in Tribal Council or, failing such agreement, in an amount determined by the Surface Rights Board.

(c) Where an interest in Gwich'in lands is required by a person described in (a), such interest shall, in the absence of an agreement with the Gwich'in, be acquired pursuant to chapter 23.

20.4 COMMERCIAL ACCESS

20.4.1 (a) Where any person, as of either the date of land withdrawal following land selection or the date of transfer of land where no prior withdrawal takes place, has an existing right to use or operate on lands which become Gwich'in lands or on waters overlying such lands, including land use permits, licences or other rights of access to or across such lands or waters, such right shall continue and shall include any associated benefits and privileges, including:

(i) such renewals, replacements and transfers as might have been granted or permitted had the lands not become Gwich'in lands; and

- (ii) the ability of employees and clients of such existing rights-holders to exercise such rights as may be necessary to permit the existing rights-holders to continue to use or operate on Gwich'in lands or waters overlying Gwich'in lands.
- (b) Nothing in (a) is intended to affect the discretion of government to grant or refuse the renewal, replacement, extension of term or transfer of any such right.
- (c) Any amendment to an existing right described in (a) other than a renewal, replacement, extension of term or transfer of such existing right shall require the agreement of the Gwich'in Tribal Council or, failing such agreement, an order of the Surface Rights Board.

20.4.2

- (a) Any person has the right to use, in the course of conducting a commercial activity:
 - (i) navigable rivers and other navigable waters that can be entered from such rivers where such waters overlie Gwich'in lands;
 - (ii) portages on Gwich'in lands associated with navigable rivers and other navigable waters that can be entered from such rivers; and
 - (iii) waterfront lands within Gwich'in lands, associated with navigable rivers and other navigable waters that can be entered from such rivers;for travel by water.
- (b) The rights specified in (a) must be exercised using the most direct route and by minimizing use of the portages and waterfront lands in (a).
- (c) The rights specified in (a)(ii) and (iii) are subject to the conditions that:
 - (i) prior notice be given to the Gwich'in Tribal Council;
 - (ii) no permanent or seasonal camp or structure be established on lands to which such rights apply;
 - (iii) there be no significant alteration or damage to the lands to which such rights apply; and
 - (iv) no commercial activity, other than such activity as is necessarily incidental to travel, be conducted on the lands to which such rights apply.
- (d) If any person is unable to comply with the conditions in (b), (c) or **20.1.4**, the rights in (a) may only be exercised with the agreement of the Gwich'in Tribal Council, or failing such agreement, an order of the Surface Rights Board.
- (e) Locations where the rights of access in (a)(ii) and (iii) are restricted are set out in schedule XIV, appendix F.

20.4.3 Any person who requires access across Gwich'in lands and waters overlying such lands to reach adjacent lands or waters for commercial purposes has a right to such access provided that:

- (a) the access is of a casual and insignificant nature and prior notice is given to the Gwich'in Tribal Council; or
- (b) the route used is recognized and being used for such access on a regular basis, whether year round or intermittently, prior to either the date of land withdrawal following land selection or the date of transfer of land where no prior withdrawal takes place, and there is no significant alteration in the use of the route.
- (c) Subject to the expropriation provisions of this agreement and unless the Gwich'in agree, any access route which may be established or improved after the date of settlement legislation shall remain settlement land and shall not be a highway or public road, by operation of law or otherwise, notwithstanding that the route is established or improved.

20.4.4

- (a) Any person who reasonably requires access across Gwich'in lands and waters overlying such lands to reach adjacent lands or waters for a commercial purpose has a right to such access with the agreement of the Gwich'in Tribal Council or, failing such agreement, an order of the Surface Rights Board.
- (b) Notwithstanding 26.2.1(b), the Surface Rights Board shall not make an order under (a) unless it is satisfied that such access is reasonably required. The Board shall ensure that any access is by a suitable route least harmful to the Gwich'in.

20.4.5 Notwithstanding 20.4.2, any person licensed to conduct a commercial fishing operation on waters overlying or adjacent to Gwich'in lands has a right of access to the waterfront lands on Gwich'in lands for tying up vessels or attaching nets and has such right of access to waters overlying Gwich'in lands as is required to conduct such commercial fishing operation.

20.4.6

- (a) Subject to (b), any person having a right to explore, develop or produce minerals under or on Gwich'in lands has a right of access to Gwich'in lands and waters overlying such lands for the purposes of exploring, developing, producing or transporting minerals with the agreement of the Gwich'in Tribal Council or, failing such agreement, an order of the Surface Rights Board.
- (b) Notwithstanding 20.4.1, persons having a right to prospect for minerals and to locate claims and who do not require a land use permit for the exercise of such rights, shall have access to Gwich'in lands described in 18.1.2(a) and waters overlying such lands provided that:
 - (i) notice, including such person's address, shall be given to the Gwich'in Tribal Council at least seven days prior to entry on such Gwich'in lands; and
 - (ii) such notice shall specify the National Topographic System map sheet (1:50,000 scale) which includes the Gwich'in lands to which access is required.

20.4.7 In 20.4.1 to 20.4.6, "any person" includes government and "commercial purposes" includes the exploration for and development, production and transportation of minerals.

21 SUBSURFACE RESOURCES

21.1.1 In this chapter,

"development" means the stage after a decision to go into production has been made, but before actual production commences; and

"production" means the removal and taking ownership of minerals other than for assay or testing purposes.

21.1.2 Prior to opening any lands in the settlement area for oil and gas exploration, government shall notify the Gwich'in Tribal Council, provide it with an opportunity to present its views to government on the matter, including benefits plans and other terms and conditions to be attached to rights issuance, and consider such views.

21.1.3 Before any oil and gas exploration takes place, the person proposing to explore and the Gwich'in Tribal Council shall consult on the exercise of the person's exploration rights with respect to the matters listed in (a) to (h) below. Similar consultations shall be held before the exercise of a developer's rights to develop or produce:

- (a) environmental impact of the activity and mitigative measures;
- (b) impact on wildlife harvesting and mitigative measures;
- (c) location of camps and facilities and other related site specific planning concerns;
- (d) maintenance of public order including liquor and drug control;
- (e) Gwich'in employment, business opportunities and contracts, training orientation and counselling for Gwich'in employees, working conditions and terms of employment;
- (f) expansion or termination of activities;
- (g) a process for future consultations; and
- (h) any other matter of importance to the Gwich'in or the person.

Such consultations are not intended to result in any obligations in addition to those required by legislation.

21.1.4 Any person who proposes to explore for minerals other than oil and gas and who requires a land use permit or water licence shall consult the Gwich'in Tribal Council as provided in 21.1.3.

21.1.5 Similar consultations shall be held before the exercise of a developer's right to develop or produce minerals other than oil and gas.

21.1.6 The Government of the Northwest Territories shall involve the Gwich'in in the development and implementation of any Northern Accord on oil and gas development in the Northwest Territories which is negotiated pursuant to the enabling agreement, dated September 5, 1988, between Canada and the Government of the Northwest Territories.

21.1.7

Government agrees to consult the Gwich'in Tribal Council in relation to any proposed legislation which affects only the Northwest Territories or only Yukon and the Northwest Territories and which

- (a) regulates the exploration, development or production of subsurface resources in the settlement area, or
- (b) establishes requirements for subsurface rights issuance in relation to subsurface resources in the settlement area.

22 GWICH'IN MUNICIPAL LANDS

22.1 OBJECTIVES

22.1.1 The objectives of this chapter are:

- (a) to provide the Gwich'in with land within local government boundaries for residential, commercial, industrial and traditional purposes;
- (b) to ensure that Gwich'in municipal lands will have legal characteristics similar to other privately owned lands within municipalities;
- (c) to ensure that local governments maintain adequate land for public infrastructure requirements and for residential, commercial, industrial and recreational purposes;
- (d) to ensure that municipal growth occurs in a timely, logical and cost-effective manner, through negotiations between the Gwich'in and the Government of the Northwest Territories or local governments; and
- (e) to allow for the establishment of new local governments and for the development and change of status of local governments.

22.2 GENERAL PROVISIONS

- 22.2.1 (a) Government and the Gwich'in have agreed to the selection of Gwich'in municipal lands within local government boundaries pursuant to the process set out in appendix D. Such municipal lands are set out schedule XVI, appendix F. Where there is any change to the extent or location of Gwich'in municipal lands pursuant to this agreement, schedule XVI shall be amended to reflect this change and such change shall not be considered to be an amendment to the agreement.
- (b) Gwich'in municipal lands shall be held in fee simple reserving therefrom the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands and the right to work the same, subject to any rights, titles or interests in the lands existing at the date of settlement legislation.
- (c) Gwich'in municipal lands shall be held subject to the provisions of this chapter.
- 22.2.2 Gwich'in municipal lands may be conveyed to a participant or any other person and thereupon cease to be Gwich'in lands.
- 22.2.3 Nothing in this agreement is intended to prejudice the authority and jurisdiction of local governments or to interfere with their political development.
- 22.2.4 Following the date of settlement legislation, Canada may revoke the reservation by notation in the Land Register of the Department of Indian Affairs and Northern Development of lands reserved in the name of the Indian Affairs Branch for Indian housing within the local government boundaries.

22.3 ACQUISITION OF GWICH'IN MUNICIPAL LAND FOR PUBLIC PURPOSES

22.3.1 Gwich'in municipal lands may be acquired by means of:

- (a) expropriation in accordance with legislation in respect of expropriation, provided that the requirements specified in 23.1.4 and 23.1.6 shall apply to any such expropriation; or
- (b) the process specified in 22.3.2, 22.3.3 and 22.3.4.

22.3.2 The Gwich'in agree that Gwich'in municipal lands can be made available to local governments for the purpose of public road and utility corridors which will be of general advantage to the community. To this end, a designated Gwich'in organization shall enter into negotiations with a local government which proposes to acquire Gwich'in municipal lands for public roads or utility corridors.

22.3.3 Such negotiations shall proceed on the basis that any lands so acquired by the local government shall be without cost to the local government provided that:

- (a) the total lands so acquired from any parcel do not exceed 10 percent of the area of that parcel of Gwich'in municipal lands;
- (b) the negotiations will only apply to parcels of Gwich'in municipal lands which are each in excess of two hectares (approximately five acres) in area;
- (c) improvements on the land will be paid for at fair market value;
- (d) Gwich'in interests are taken into account in relation to the extent and location of the lands to be acquired; and
- (e) the local government will not acquire the lands by expropriation regardless of the outcome of negotiations.

22.3.4 If a negotiated solution as described in 22.3.2 and 22.3.3 is not possible, and a local government determines that nevertheless the acquisition of such lands is essential to the public interest, the local government may refer the matter to arbitration pursuant to chapter 6. The jurisdiction of the arbitrator shall be limited to a consideration of the necessity of the acquisition, the extent and location of the lands to be acquired by the local government and the value of improvements.

22.4 REAL PROPERTY TAXATION

22.4.1 In 22.4,

"developed Gwich'in municipal lands" means all Gwich'in lands and improvements thereon which are assessable real property within local government boundaries, as defined in the *Property Assessment and Taxation Act*, R.S.N.W.T. 1988, c. P-10, except for lands which have no improvements and are not serviced;

"serviced lands" are:

- (a) lands within a planned and approved subdivision and which are available for development; or
- (b) lands which are connected to or receiving local government services;

"improvements" do not include improvements which are used primarily for wildlife harvesting or other traditional purposes, including trapping cabins, camps and tent frames; and

"real property taxation" means any tax, levy or charge, or other assessment against lands for local government services or improvements.

22.4.2 Developed Gwich'in municipal lands are subject to real property taxation in accordance with legislation. Other Gwich'in municipal lands are not subject to any real property taxation by the federal, territorial or local government.

22.4.3 Should a participant or other person who occupies Gwich'in municipal lands fail to pay real property taxes levied against such participant or other person in respect of such lands when such taxes are in arrears for a period of one year or more, the designated Gwich'in organization which holds title shall be liable to pay such taxes after notice from the local government.

22.4.4

- (a) To assist in the post settlement transition, the Government of Canada agrees to pay to local governments any real property taxes levied for 15 years from the date of settlement legislation in respect of Gwich'in municipal lands which,
 - (i) prior to the date of this agreement, were lands noted within the Land Register of the Department of Indian Affairs and Northern Development as reserved in the name of the Indian Affairs Branch; or
 - (ii) were lands intended to replace such lands in (i) as were unavailable for selection and which were identified for this purpose at the time of land selection.
- (b) During the 15-year period in (a), Canada shall have the same rights in respect of any assessment of taxes as a property owner.
- (c) Schedule XV of appendix F is a complete list of the lands referred to in (a).

22.4.5 Any participant who owns and occupies a residence on Gwich'in municipal lands shall be eligible to apply for a property tax rebate pursuant to the *Home Owners Property Tax Rebate Act*, R.S.N.W.T. 1988, c. H-4, notwithstanding that title to the land is held by a designated Gwich'in organization.

22.5 CHANGES IN MUNICIPAL BOUNDARIES

22.5.1 Prior to any change in a local government boundary the Government of the Northwest Territories shall consult with a designated Gwich'in organization.

22.5.2

- (a) Where there is a demonstrated need to change the boundary of a local government, and where such change will include Gwich'in lands, the location of the new boundary shall be negotiated by the Government of the Northwest Territories and the Gwich'in.
- (b) Negotiation may include terms and conditions under which Gwich'in lands will be included within a local government boundary.
- (c) In negotiating the change of a local government boundary to include Gwich'in lands, government and the Gwich'in shall take into consideration the following factors:
 - (i) any cultural, economic or other special value of the lands to the Gwich'in;
 - (ii) the Gwich'in need to maintain land for traditional purposes or to maintain a traditional lifestyle;
 - (iii) any arrangements for management or self-government affecting Gwich'in lands;
 - (iv) the requirements of the local government for a change in its boundary; and
 - (v) any other factor deemed relevant by the negotiators.
- (d) Where the Government of the Northwest Territories and the Gwich'in fail to reach agreement within 120 days, either party may refer the matter to dispute resolution pursuant to chapter 6.

22.5.3 Once a new local government boundary is established, Gwich'in lands within the boundary shall have the status of Gwich'in municipal lands and Gwich'in lands beyond the boundary shall have the status of settlement lands.

22.6 CHANGE IN STATUS

22.6.1 A local government may, pursuant to territorial legislation in respect of local governments and with the consent of its residents, apply to the Government of the Northwest Territories to change its status to a settlement corporation, an incorporated charter community, hamlet, village, town or city.

22.7 NEW LOCAL GOVERNMENTS

22.7.1 Where a new local government is proposed which would include Gwich'in lands, the designation and establishment of such local governments shall be by way of negotiation and agreement between the Government of the Northwest Territories and the Gwich'in Tribal Council.

22.8 EXISTING LOCAL GOVERNMENTS

22.8.1 The following are local governments for the purposes of this chapter:

The Town of Inuvik
The Hamlet of Aklavik
The Settlement Corporation of Arctic Red River
The Hamlet of Fort McPherson

23

EXPROPRIATION OF SETTLEMENT LANDS

23.1.1

The provisions of this chapter apply only to settlement lands.

23.1.2

It is of fundamental importance to maintain the quantum and integrity of settlement lands. Therefore, as a general principle, such lands shall not be expropriated.

23.1.3

Notwithstanding 23.1.2, settlement lands may be expropriated by an expropriating authority in accordance with legislation as modified by the provisions of this chapter.

23.1.4

- (a) Expropriation of settlement land shall require the consent of the Governor in Council in the case of an act of Parliament, or the Executive Council of the Government of the Northwest Territories in the case of an act of the Northwest Territories.
- (b) Notice of the intention of an expropriating authority to seek the approval of the Governor in Council or the Executive Council, as the case may be, shall be given to the Gwich'in Tribal Council by the expropriating authority.

23.1.5

Where the effect of an expropriation would be to reduce the quantum of settlement lands below the quantum of such lands as set out in 18.1.2 ("initial quantum"), compensation shall include lands of at least sufficient quantum to restore the total quantum of such lands to the initial quantum less any quantum held as credit pursuant to 23.1.18. The initial quantum shall be adjusted to reflect any change to the quantum of settlement lands resulting from an exchange of lands pursuant to 27.2.1 or from an adjustment of municipal boundaries pursuant to 22.5.3.

23.1.6

An expropriating authority shall provide the Gwich'in Tribal Council with notice of the lands required and an opportunity to negotiate the location, extent and nature of the interest required by the expropriating authority.

23.1.7

As a general principle, compensation to be offered for lands shall be the provision of alternative lands of equivalent significance and value as the expropriated lands.

23.1.8

Lands offered or awarded as compensation for expropriated lands shall be in the settlement area.

23.1.9

Subject to 23.1.5, if the provision of alternative lands of equivalent significance and value is not reasonably possible, or is not agreed upon by the Gwich'in Tribal Council and the expropriating authority, compensation shall be in money or any combination of land and money.

23.1.10

Where an expropriating authority is unable to provide lands as compensation to the Gwich'in, government shall make lands available to the expropriating authority by sale or otherwise providing that lands are available.

23.1.11

In determining the value of lands for the purpose of compensation, the value of the lands for the purpose of harvesting of wildlife and the cultural or other special value to the Gwich'in shall be taken into account.

23.1.12 In the event the Gwich'in Tribal Council and the expropriating authority do not agree on compensation, the matter shall be referred to the dispute resolution provisions of chapter 6. Subject to **23.1.5**, **23.1.7** and **23.1.8**, an arbitrator may make an award in land, money or any combination thereof and, where appropriate, costs and interest. The arbitrator shall not award any land which is subject to a fee simple interest. The arbitrator shall not award any land which is subject to a third party interest, less than a fee simple interest, unless the Gwich'in Tribal Council, the expropriating authority and, in the case of lands provided pursuant to **23.1.10**, government agree, in which case the third party interest shall continue in accordance with its terms and conditions, including any rights of renewal, replacement, extension of term or transfer associated therewith.

23.1.13 The Gwich'in Tribal Council and the expropriating authority may agree not to refer the determination of compensation to arbitration but to determine compensation pursuant to the expropriating authority's statutory procedure. In such cases the statutory procedure shall be deemed to include the following:

- (a) service of a notice of intention to expropriate;
- (b) a requirement to offer compensation;
- (c) a provision for a compensation hearing;
- (d) a requirement for compensation in accordance with **23.1.7**, **23.1.9** and **23.1.11**; and
- (e) power to award costs with interest.

23.1.14 Nothing in this chapter is intended to eliminate or duplicate any legislative requirement for a public hearing or inquiry into the necessity of an expropriation.

23.1.15 The provisions of **23.1.12** do not apply to expropriations under the *National Energy Board Act*, R.S. 1985, c. N-7, except that:

- (a) an arbitration committee appointed under that act to determine compensation shall include at least one nominee of the Gwich'in Tribal Council;
- (b) the arbitration committee shall take into account the cultural or other special value of the land to the Gwich'in in determining the value of the land;
- (c) the arbitration committee may determine that compensation shall be in the form of land of the expropriating authority, or money, or any combination thereof; and
- (d) the arbitration committee shall not award any land which is subject to a third party right, title or interest unless the Gwich'in Tribal Council, the expropriating authority and, in the case of lands provided pursuant to **23.1.10**, government, agree, in which case the third party right, title or interest shall continue, in accordance with its terms and conditions, including any rights of renewal, replacement, extension of term or transfer associated therewith.

23.1.16 Any lands which are expropriated shall no longer be settlement lands. Lands acquired by the Gwich'in under these provisions shall be settlement lands.

23.1.17 Where lands which have been expropriated are, in the opinion of the expropriating authority, no longer required, the Gwich'in Tribal Council may reacquire such lands at a price to be established by the expropriating authority. The expropriating authority may not dispose of the lands to any person who is not a participant for a price less than that offered first to the Gwich'in. Lands so reacquired by the Gwich'in shall not be settlement lands unless government so agrees.

23.1.18 Where government and the Gwich'in Tribal Council agree, the selection and conveyance of land to replace expropriated land may be deferred, and the Gwich'in credited for such lands. The Gwich'in may later exchange any such credits for such lands as agreed to by the parties.

23.1.19 The Gwich'in shall not be liable for any capital gains tax in respect of the expropriation of settlement lands. Canada shall be liable for any such tax.

24 LAND AND WATER REGULATION

24.1 GENERAL

24.1.1 The following principles apply to this chapter:

- (a) an integrated system of land and water management should apply to the Mackenzie Valley;
- (b) the regulation of land and water in the settlement area and in adjacent areas should be co-ordinated; and
- (c) government shall retain the ultimate jurisdiction for the regulation of land and water.

24.1.2

- (a) The process of establishing new national parks and commemorating national historic parks and sites in the Mackenzie Valley after the date of settlement legislation shall be subject to the land use planning and environmental impact assessment and review provisions of this chapter. The land use planning and the regulation of land and water use provisions of this chapter shall not apply to national parks and national historic parks and sites administered by the Canadian Parks Service.
- (b) The environmental impact assessment and review provisions of this chapter shall apply to development proposals in national parks, national park reserves and national historic parks and sites.
- (c) Legislation shall provide for co-ordination of the activities of the boards established pursuant to this chapter with the management of national parks and with the activities of bodies to be established pursuant to chapter 15, and with the management of national historic parks and sites and with the activities of bodies to be established pursuant to chapter 16.

24.1.3

- (a) Each of the boards referred to in this chapter, other than the Interim Planning Board, shall be established, within two years of the date of settlement legislation, as an institution of public government by legislation which shall implement the provisions of this chapter and may provide for any other matter consistent with this chapter.
- (b) The costs of the boards referred to in this chapter shall be the responsibility of government. Each board shall prepare an annual budget, subject to review and approval by government.
- (c) Legislation shall provide for the co-ordination of the activities of the boards referred to in this chapter, the Renewable Resources Board and the Surface Rights Board.
- (d) Legislation may provide for the reallocation of functions among any of the boards referred to in this chapter, provided that:
 - (i) environmental assessment and review shall remain with the Review Board as set out in 24.3; and
 - (ii) the Gwich'in Tribal Council shall be consulted during the drafting of any such legislation.

- (e) Any board established pursuant to this chapter may establish its own rules of procedure in accordance with legislation.
- (f) Any board established pursuant to this chapter shall have, subject to its approved budget, such staff, professional and technical advisors as are necessary for the proper conduct of its affairs and the boards may determine, where appropriate, to share such staff or advisors among the boards.
- (g) All information in the possession of a government department or agency relevant to a matter before any of the boards established pursuant to this chapter shall be provided, upon request, to such board.
- (h) A vacancy in the membership of a board does not impair the right of the remainder to act.

24.1.4

- (a) The legislation implementing the provisions of this chapter shall provide for a method of monitoring the cumulative impact of land and water uses on the environment in the Mackenzie Valley, and for periodic, independent, environmental audits which shall be made public.
- (b) If any board or similar body is established by such legislation to carry out the monitoring and audit functions referred to in (a) in the settlement area, the Gwich'in shall be entitled to a meaningful role in such board or agency to be set out in legislation, after consultation with the Gwich'in Tribal Council.
- (c) If the monitoring or environmental audit functions referred to in (a) are carried out in the settlement area by a department of government, the department shall do so in consultation with the Gwich'in Tribal Council.

24.1.5

Where a board described in this chapter has the authority to enter into contracts or similar arrangements, the Gwich'in Tribal Council shall not be disqualified from entering into such contracts or arrangements solely by virtue of the fact that there are Gwich'in nominees on the board.

24.1.6

Where any board described in this chapter is required to make a decision which may affect an area which is being used by aboriginal persons who are party to an adjacent comprehensive land claim agreement in the Northwest Territories, the aboriginal party to the adjacent land claims agreement shall have the right to have representation on the board. Each board shall determine how to implement this provision provided that the proportional representation of aboriginal groups and government, not including the chairperson, be maintained.

24.2

LAND USE PLANNING

24.2.1

A Planning Board shall be established and shall have jurisdiction, in accordance with the provisions of this agreement, for developing, reviewing and proposing approvals, exceptions and amendments in respect of a land use plan for the settlement area. The Planning Board shall have regard to any land use plan which is in effect for the settlement area at the date of establishment of the Planning Board.

24.2.2 The Planning Board shall have equal membership from nominees of the Gwich'in Tribal Council and of government, not including the chairperson.

24.2.3 The head office of the Planning Board shall be in the settlement area.

24.2.4 The following principles shall guide land use planning in the settlement area:

- (a) the purpose of land use planning is to protect and promote the existing and future well-being of the residents and communities of the settlement area having regard to the interests of all Canadians;
- (b) special attention shall be devoted to:
 - (i) protecting and promoting the existing and future social, cultural and economic well-being of the Gwich'in;
 - (ii) lands used by the Gwich'in for harvesting and other uses of resources; and
 - (iii) the rights of the Gwich'in under this agreement;
- (c) land use planning shall directly involve communities and designated Gwich'in organizations; and
- (d) the plan developed through the planning process shall provide for the conservation, development and utilization of land, resources and waters.

24.2.5 Water resources planning within the Mackenzie Valley is an integral part of land use planning.

24.2.6 Land use planning within local government boundaries shall be the responsibility of the local or territorial government. The local or territorial government shall consult with the relevant Gwich'in community in the development of a community plan.

24.2.7 The Gwich'in may prepare a land use plan or plans for settlement lands in the settlement area which shall be considered by the Planning Board.

24.2.8 Any person may apply to the Planning Board for an exception or amendment to the plan to allow a proposed use.

24.2.9 Decisions of the Planning Board in respect of the land use plan shall be subject to approval by government in a manner to be provided in legislation.

24.2.10 Upon approval of a land use plan, those authorities with jurisdiction to grant licences, permits, leases or interests relating to the use of land and water in the settlement area shall conduct their activities and operations in accordance with the plan.

24.2.11 The Planning Board may liaise and co-ordinate its plan, or co-operate in land use planning, with the appropriate land use planning bodies for the Inuvialuit Settlement Region, the Sahtu Settlement Region and the primary use area described in appendix C. Any co-operative land use plans are subject to the approval of the relevant federal and territorial ministers as may be provided in legislation.

24.2.12 (a) Between the date of settlement legislation and the date that the legislation establishing the Planning Board comes into effect, land use planning in the settlement area shall be conducted by an Interim Planning Board on the basis of the plan developed for the settlement area by the Mackenzie Delta-Beaufort Sea Regional Land Use Planning Commission.

(b) The Interim Planning Board shall have equal membership from nominees of the Gwich'in Tribal Council and of government, not including the chairperson, who shall be selected by the other members of the Interim Planning Board.

(c) Planning by the Interim Planning Board shall be in accordance with the July 28, 1983 "Basis of Agreement for Land Use Planning in the Northwest Territories", together with amending agreements thereto.

24.3 ENVIRONMENTAL IMPACT ASSESSMENT AND REVIEW

24.3.1 All development proposals in the Mackenzie Valley, including development proposals in relation to Gwich'in lands, shall be subject to the process of environmental impact assessment and review as set out in 24.3.

24.3.2 (a) An Environmental Impact Review Board ("the Review Board") shall be established as the main instrument for the conduct of environmental impact assessment and review in the Mackenzie Valley.

(b) The Review Board shall have equal membership from nominees of aboriginal groups and of government, not including the chairperson. No less than one member of the Board shall be a nominee of the Gwich'in Tribal Council.

24.3.3 (a) Legislation may provide

(i) for development proposals or classes thereof which are exempt from the process of environmental impact assessment and for the amendment of any such exemptions; and

(ii) for a preliminary screening of development proposals by any government department or board, in order to determine whether any assessment is required.

(b) Legislation shall provide that a development proposal which would otherwise be exempt from assessment may be assessed if, in the opinion of the Review Board, it is considered to be of special environmental concern by reason of its cumulative effects or otherwise.

24.3.4 A development proposal in the settlement area or which may impact upon the settlement area may be referred for assessment to the Review Board by the Gwich'in Tribal Council or any governmental authority, and by the Review Board on its own motion.

24.3.5 (a) Subject to 24.3.3(a), a development proposal shall be assessed by the Review Board in order to determine whether the proposed development will likely have a significant adverse impact on the environment or will likely be a cause of significant public concern. In making its determination the Review Board may consider terms and conditions to the proposed development which would prevent significant adverse impact on the environment and may recommend the imposition of such terms and conditions to the Minister. Such terms and conditions shall be subject to review pursuant to 24.3.14.

(b) Where the Review Board determines that the proposed development will likely have a significant adverse impact on the environment or will likely be a cause of significant public concern, the Review Board shall determine that the proposed development be subject to an environmental impact review.

(c) No licence or approval that would have the effect of permitting a development proposal to proceed shall be issued in respect of the proposal until the assessment and review process as set out in 24.3 has been completed.

24.3.6 Notwithstanding a determination by the Review Board that a review is not required, the Minister may direct that an environmental impact review be conducted.

24.3.7 (a) Where the Review Board determines that a development proposal should be subject to an environmental impact review, or where the Minister issues a direction under 24.3.6, the review shall be conducted, subject to 24.3.8, by a panel of the Review Board.

(b) The Review Board panel may include persons appointed by the Review Board because of their special expertise.

(c) When the Review Board conducts a review, the Gwich'in Tribal Council shall be entitled to nominate members of the Review Board panel, as follows:

(i) 50 percent of the members, not including the chairperson, where the Review Board has determined that the likely significant adverse impact or likely cause of significant public concern is wholly or predominantly within the settlement area; or

(ii) in all other cases, where the Review Board has determined that the impact of a development proposal is partially within the settlement area, one member.

24.3.8 Where a public review of a development proposal wholly within the Mackenzie Valley is to be conducted pursuant to the Environmental Assessment and Review Process Guidelines Order, or successor legislation, the Federal Environmental Assessment Review Office (FEARO) and the Review Board shall consult and shall establish a joint review panel in lieu of separate review panels. The panel shall produce a report and recommendations which shall be submitted to the Ministers concerned.

24.3.9 Where a panel established by the Minister of the Environment reviews a development proposal which overlaps the Mackenzie Valley and an adjacent area subject to a comprehensive land claim agreement, nominees put forward by the relevant aboriginal groups, including the Gwich'in, shall be no less than one quarter of the members of the panel, not including the chairperson.

24.3.10 The members of the Review Board or the joint review panel shall be free of any conflict of interest relative to the development proposal; however, no member shall be disqualified solely on the ground of being a participant.

24.3.11 Legislation shall provide the Review Board with the power to subpoena witnesses and documents in carrying out its responsibilities.

24.3.12 An environmental impact review shall have regard to:

- (a) the protection of the existing and future economic, social and cultural well-being of the residents and communities in the Mackenzie Valley;
- (b) the protection of the environment from significant adverse impact from the proposed development; and
- (c) in cases where the proposed development will likely result in a significant adverse impact on the environment, the need for mitigative or remedial measures.

24.3.13 An environmental impact review shall include:

- (a) the submission by the proponent of an impact statement in accordance with any guidelines established by the Review Board or the panel;
- (b) such analysis by the Review Board or the panel as is considered appropriate;
- (c) public consultation or hearings in affected communities; and
- (d) a report resulting from the review to the Minister with a recommendation that a development proposal be approved, with or without conditions, or rejected.

24.3.14 The Minister shall consider the report and recommendation of the Review Board under 24.3.5(a) or 24.3.13(d) or of the joint review panel under 24.3.8. In the case of the Review Board, the Minister may accept the recommendation, may refer the recommendation back for further consideration or, after consulting with the Review Board, accept with modifications or reject the recommendation. In the case of a joint review panel, the Minister may accept the recommendation, accept it with modifications or reject the recommendation. The Minister may consider information not before the Review Board or the panel, and matters of public interest not considered by the Review Board or the panel. Any new facts bearing on the environmental impact of the development proposal shall be identified by the Minister in consultation with the Review Board.

24.3.15 Written reasons, which shall be public, shall be given for all decisions and recommendations under 24.3.

24.3.16 Except in the case of an agency described in 24.3.17, any decision of the Minister pursuant to 24.3.14 shall be implemented by the Land and Water Board and by each department and agency of government responsible for issuing a licence, permit or other authorization in respect of the development proposal to the extent of the legislative authority of each department and agency.

24.3.17 (a) Where the report described in 24.3.13(d) or the recommendations in 24.3.5(a) and (b) concern a development proposal in respect of which an independent regulatory agency may issue a permit, licence, certificate or other approval, the report or the recommendations shall be forwarded to that agency as well as to the Minister. The agency shall deal with the report and recommendations in the same manner as the Minister under 24.3.14. The provisions of 24.3.15 and 24.3.18 shall apply to the agency with such modifications as the circumstances require. The agency shall implement any recommendations it accepts, to the extent of its legislative authority.

(b) In (a),
"independent regulatory agency" means a statutory body which, in the exercise of regulatory or licensing powers, is not subject to specific control or direction by government notwithstanding that it may be subject to general direction whether by guidelines, regulations or directives, or that its decisions may be subject to approval, variance or revision by government.

24.3.18 All parts of this process shall be carried out in a timely manner.

24.3.19 (a) After the date of settlement legislation and before the enactment of legislation pursuant to this chapter, where there is a public review, pursuant to the Environmental Assessment and Review Process Guidelines Order, of a development proposal which is in the settlement area or which may have an effect on the settlement area, the Minister of the Environment shall appoint one member to the review panel from a list of persons nominated by the Gwich'in Tribal Council.

(b) The Federal Environmental Assessment Review Office shall consult the Gwich'in Tribal Council throughout the assessment and review stages of a development proposal in (a).

24.4 REGULATION OF LAND AND WATER USE

Land and Water Board (Settlement Area)

24.4.1 A single Land and Water Board shall be established to regulate land and water use throughout the settlement area, including Gwich'in lands.

24.4.2 (a) The objective of the Land and Water Board is to provide for conservation, development and utilization of the land and water resources of the settlement area in a manner that will provide the optimum benefit therefrom for present and future residents of the settlement area and the Mackenzie Valley and for all Canadians.

(b) In 24.4, "land" means the surface of land.

24.4.3 The decisions of the Land and Water Board shall be subject to review by the Minister in a manner to be provided in legislation.

24.4.4 Legislation may provide the Land and Water Board with the power to subpoena witnesses and documents in carrying out its responsibilities.

24.4.5

(a) The Land and Water Board shall have the following powers:

- (i) issue, amend or renew licences, permits and authorizations and the terms and conditions attaching thereto for all uses of land and water, including those uses necessary for the exercise of subsurface rights, except where those powers are exercised by a municipality or local government with respect to land within such local government boundaries;
- (ii) oversee compliance with its decisions through inspections or otherwise, provided there shall be no duplication of the compliance system as between the Land and Water Board and other government agencies or departments;
- (iii) enforce or secure compliance with its decisions by the suspension or cancellation of licences, permits and authorizations and such other methods as may be provided by legislation;
- (iv) establish policies and guidelines applicable to its licences, permits and authorizations;
- (v) hold public consultations and hearings in communities in relation to any matter within its jurisdiction;
- (vi) establish procedures for the conduct of its business, including public hearings;
- (vii) propose changes to legislation in respect of land or water use to the Minister, and be consulted by the Minister on any proposed such legislation; and
- (viii) establish rules and procedures, including reasonable fixed time limits, for the negotiation of agreements under 19.1.15.

(b) Legislation may provide for the exemption from any requirement for a licence, permit or other authorization of particular uses of land or water.

(c) Legislation shall provide for reasonable notice to affected communities and to designated Gwich'in organizations of any application to the Land and Water Board for a licence, permit or authorization for a land or water use in the settlement area.

(d) Legislation may provide for the co-ordination of the activities of the Land and Water Board with other government agencies, departments and boards with responsibilities for the regulation of land and water use.

Land and Water Board (For Area Larger Than Settlement Area)

24.4.6 (a) Where, by legislation, any other Land and Water Board is established having jurisdiction in an area which includes the settlement area, it shall assume the powers and responsibilities of the Land and Water Board in 24.4.1 and shall become the Land and Water Board for the purposes of this agreement.

(b) Legislation may provide for regional panels of the Land and Water Board in (a).

(c) The Gwich'in Tribal Council shall be consulted with respect to any such legislation.

Membership

24.4.7 (a) There shall be equal membership from nominees of the Gwich'in Tribal Council and government, not including the chairperson, on the Land and Water Board established pursuant to 24.4.1 and on any regional panel established pursuant to 24.4.6(b) for the settlement area.

(b) In the case of a Land and Water Board established pursuant to 24.4.6(a), such Land and Water Board shall have no less than one member who is a nominee of the Gwich'in Tribal Council.

24.4.8 After the date of settlement legislation and prior to the enactment of the legislation establishing the Land and Water Board referred to in 24.4.1, no permit, licence or authorization for land or water use in the settlement area shall be issued by government without at least 30 days' notice to the Gwich'in Tribal Council provided that the 30-day period may be reduced where it would be inconsistent with any provision contained in legislation.

25

HERITAGE RESOURCES

25.1.1

In this chapter,

"Gwich'in heritage resources" means:

- (a) archaeological and historic places and sites and burial sites;
- (b) artifacts and objects of historical, cultural or religious significance; and
- (c) records;

which relate to the history and culture of the Gwich'in.

25.1.2

Gwich'in heritage resources provide a record of Gwich'in use and occupancy of the settlement area through time and are of spiritual, cultural, religious and educational significance to the Gwich'in.

25.1.3

The Gwich'in shall be actively involved in the conservation and management of Gwich'in heritage resources, consistent with the maintenance of the integrity of public archives and national and territorial heritage resources collections.

25.1.4

Heritage resource management decisions and policies shall take into account Gwich'in cultural values in relation to the use and protection of Gwich'in heritage resources.

25.1.5

The Gwich'in Tribal Council shall be consulted in the formulation of government policy and legislation on Gwich'in heritage resources in the Mackenzie Valley.

25.1.6

The Gwich'in shall have an opportunity to be represented on any boards, agencies or committees established in the Mackenzie Valley by government to administer or protect Gwich'in heritage resources. The Gwich'in Tribal Council shall be consulted with respect to the implementation of this provision prior to the establishment of any such board, agency or committee.

25.1.7

As part of the review of land use permit applications, applications shall be forwarded to the Gwich'in Tribal Council and the appropriate government agency for their advice respecting the presence of heritage resources on the lands included in the application and any conditions to be attached to the land use permit. That advice shall be considered by the Land and Water Board in reaching its decision on the application.

25.1.8

Gwich'in historic, archaeological and burial sites in the Northwest Territories shall be protected and preserved pursuant to legislation. The Gwich'in shall provide to government a list of sites of interest to the Gwich'in.

25.1.9 Archaeological site permits or historic resource permits issued by government in respect of Gwich'in heritage resources pursuant to legislation, shall specify procedures to be followed by the permit holder including:

- (a) plans and methods for site protection or restoration, where applicable;
- (b) consultation with the local Gwich'in community or communities;
- (c) disposition of materials extracted; and
- (d) submission of a technical and a non-technical report on the work completed.

25.1.10 The Gwich'in shall have preference in being hired at public sites, museums, heritage resource projects, archaeological works and similar public facilities and projects in the settlement area related to Gwich'in heritage resources, in a manner to be set out in the protected area agreement or, where there is no protected area agreement, in the management or work plans for the public sites, museums, projects, facilities and works referred to in this chapter. The Gwich'in Tribal Council shall be consulted in the development of such plans.

25.1.11 In appropriate cases, artifacts and records relating to Gwich'in heritage which have been removed from the settlement area should be returned to the settlement area or the Northwest Territories for the benefit, study and enjoyment of the Gwich'in and all other residents of the Northwest Territories. Government and the Gwich'in agree to work together towards the attainment of this objective provided that appropriate facilities and expertise exist in the settlement area for the proper maintenance and exhibition of such artifacts and records and consistent with the maintenance of the integrity of public archives and national and territorial heritage collections. Gwich'in heritage resources may be housed and exhibited in appropriate aboriginal facilities as well as in other public institutions.

25.1.12 The Gwich'in have traditionally referred to certain lakes, rivers, mountains and other geographic features and locations in the settlement area by traditional or aboriginal names. Upon request of the Gwich'in, the official name of such a place shall be reviewed and the traditional Gwich'in name may be recognized in accordance with the applicable government procedures and policies including the toponymic policy of the Government of the Northwest Territories. The Gwich'in Tribal Council shall be consulted on any proposed change of place name within the settlement area.

26

SURFACE RIGHTS BOARD

26.1

GENERAL

26.1.1

A Surface Rights Board ("the Board") shall be established as an institution of public government by legislation and shall have jurisdiction over matters relating to surface entry and compensation as set out in this agreement or legislation.

26.1.2

Members of the Board shall be residents of the Northwest Territories. When dealing with Gwich'in lands, the Board shall act through a panel of its members at least one of whom shall be a resident of the settlement area.

26.1.3

The costs of the Board shall be the responsibility of government. The Board shall prepare an annual budget, subject to review and approval by government.

26.2

POWERS AND RESPONSIBILITIES

26.2.1

The Board shall have jurisdiction to hear and determine any matter referred to it in this agreement and assigned to it by legislation including the power to:

- (a) receive submissions for dispute resolution when the holders of surface or subsurface commercial interests do not reach an agreement regarding the use of the surface with the owner or occupier of the surface;
- (b) grant right-of-entry orders whether or not compensation for entry has been determined, but the Board may not refuse to grant a right-of-entry order where an applicant has a right of access to Gwich'in lands;
- (c) attach conditions to right-of-entry orders which are not inconsistent with the approved terms and conditions pursuant to 24.3 and 24.4 and such conditions may include rights of the owner or occupier of the surface to verify the authorized use of the surface;
- (d) determine compensation for the use of the surface;
- (e) determine compensation for unforeseen damage resulting from entry;
- (f) prescribe rules and procedures for any negotiations required by this agreement, including the establishment of a reasonable time period for negotiations, subject to any limits prescribed by legislation, after which applications may be made for a right-of-entry order;
- (g) periodically review any right-of-entry order, any terms and conditions thereof, and compensation;
- (h) terminate a right-of-entry order, after a hearing, where lands are no longer being used for the purpose authorized; and
- (i) award costs.

26.2.2 In determining compensation payable in respect of Gwich'in lands, the Board shall consider all relevant factors, including:

- (a) the market value of the land;
- (b) loss of use of the land to the Gwich'in;
- (c) effect on wildlife harvesting;
- (d) adverse effect of the use upon lands retained by the Gwich'in;
- (e) damage which may be caused to the land used;
- (f) nuisance, inconvenience and noise;
- (g) the cultural and other special value of the land to the Gwich'in;
- (h) the cost associated with any inspection rights set out in a right-of-entry order; and
- (i) such other factors as may be provided for in the legislation;

but shall not consider the reversionary value of the land after the use terminates, or any entry fee payable.

26.2.3 Prior to exercising a right-of-entry order on Gwich'in lands, the holder of a surface or subsurface interest shall be required to pay to the Gwich'in Tribal Council an entry fee, to be prescribed by legislation, and 80 percent of the last compensation offer made before the matter was referred to the Board.

26.2.4 A compensation hearing in respect of Gwich'in lands shall be held not later than 30 days from the date of the right-of-entry order.

26.3 INTERIM MEASURE

26.3.1 In the event that surface rights legislation is not in effect by the date of settlement legislation, any matter which is to be determined by the Surface Rights Board pursuant to this agreement shall, until such time as surface rights legislation is in effect, be determined by arbitration pursuant to chapter 6, except that where the resolution of any matter respecting the exploration, development and production of minerals is provided for in legislation, such legislation shall apply until such time as surface rights legislation comes into effect.

27 OTHER ABORIGINAL CLAIMS

27.1 YUKON TERRITORY

27.1.1 The rights of the Gwich'in in the Yukon Territory are set out in the Yukon transboundary agreement which is attached as appendix C.

27.2 WESTERN ARCTIC REGION

27.2.1 Notwithstanding 18.1.5, the Gwich'in Tribal Council may, by agreement with the Inuvialuit, transfer to or exchange with the Inuvialuit any or all Gwich'in lands or interests in such lands in the Western Arctic Region. Any lands received from the Inuvialuit in exchange for Gwich'in lands shall be deemed to be Gwich'in lands for the purposes of this agreement.

27.2.2 The rights of the Gwich'in to harvest wildlife on Gwich'in lands pursuant to this agreement shall apply to Gwich'in lands and on and in waters overlying such lands in the Western Arctic Region. The provisions of the Inuvialuit Final Agreement in respect of wildlife management apply to such lands and waters.

27.2.3 The Gwich'in have the right to harvest those species of wildlife which they have traditionally harvested within those areas of the Western Arctic Region which have been traditionally used by the Gwich'in to harvest wildlife.

27.2.4 The rights of the Gwich'in to harvest wildlife pursuant to 27.2.3 are subject to legislation applicable to Inuvialuit harvesters pursuant to the Inuvialuit Final Agreement.

27.2.5 The Inuvialuit have the right to harvest those species of wildlife which they have traditionally harvested within those areas of the settlement area which have been traditionally used by the Inuvialuit to harvest wildlife.

27.2.6 For greater certainty, the rights of the Inuvialuit to harvest wildlife in the settlement area are subject to legislation applicable to Gwich'in harvesters including this agreement.

27.2.7 Nothing in 27.2 is intended to affect the rights of the Gwich'in and the Inuvialuit to share wildlife resources and to enter into agreements with each other with respect to harvesting and wildlife management as recognized in clause 14(15) of the Inuvialuit Final Agreement.

27.2.8 Notwithstanding that Gwich'in lands in the Western Arctic Region are not within the settlement area, the provisions of this agreement, with the exception of 12.8 and chapter 24, shall apply to Gwich'in lands in the Western Arctic Region.

27.3 OTHER COMPREHENSIVE LAND CLAIM AGREEMENTS

27.3.1 The Gwich'in may, pursuant to an agreement with the participants of a comprehensive land claim agreement, agree to share with such participants wildlife harvesting and wildlife management rights under this agreement, provided that no such agreement shall adversely affect the rights of persons who are not participants pursuant to a comprehensive land claim agreement.

27.3.2

Notwithstanding 12.4.3 and 12.4.5, nothing in this agreement is intended to affect any right which the Dene or Metis of Colville Lake or Fort Good Hope may have to harvest wildlife in those parts of the settlement area which they have traditionally used for the harvesting of wildlife.

28

IMPLEMENTATION

28.1

IMPLEMENTATION PLAN

28.1.1

An implementation plan accompanies this agreement for the purpose of explanation but does not form part of it. It has been approved by Canada, the Gwich'in and the Government of the Northwest Territories in order to describe:

- (a) the obligations and activities required to fulfil this agreement;
- (b) who is responsible for, and the time frames required to fulfil, the obligations and the activities identified;
- (c) employment opportunities and training needs for the Gwich'in to participate in the implementation of this agreement;
- (d) legislative requirements arising from the provisions of this agreement;
- (e) a communication and information strategy to inform interested parties of the content of the implementation plan and this agreement;
- (f) a process to facilitate co-ordination and co-operation among Canada, the Gwich'in and the Government of the Northwest Territories to implement the implementation plan and this agreement;
- (g) a process to determine that the identified obligations and activities have been fulfilled; and
- (h) the costs of implementing this agreement.

28.2

IMPLEMENTATION COMMITTEE

28.2.1

Within one month of the date of settlement legislation, an Implementation Committee shall be established for a minimum 10-year period.

28.2.2

The Implementation Committee shall be composed of three senior officials: one representing the Government of Canada designated by the Minister of Indian and Northern Affairs; one designated by the Government of the Northwest Territories; and one designated by the Gwich'in Tribal Council.

28.2.3

The Implementation Committee shall operate on a consensus basis and shall:

- (a) oversee and provide direction to guide the implementation of this agreement;
- (b) monitor the status of the implementation plan;
- (c) when it deems necessary, revise the schedule of activities, reallocate resources and amend the implementation plan;
- (d) attempt to resolve implementation disputes arising between the parties. Unresolved implementation disputes shall be resolved pursuant to arbitration under chapter 6;

- (e) provide the Minister of Indian and Northern Affairs, the Government Leader of the Northwest Territories and the Gwich'in Tribal Council with an annual report, which shall be made public, on the implementation of this agreement; and
- (f) make recommendations for the implementation of this agreement for the period following the initial 10-year period, including the role of the committee.

APPENDIX A

DESCRIPTION OF THE GWICH'IN SETTLEMENT AREA

All that portion of the Northwest Territories lying within the boundaries more particularly described as follows, all topographic features hereinafter referred to being according to:

edition 2 of the Bonnet Plume Lake map sheet number 106 B of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Nadaleen River map sheet number 106 C of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Snake River map sheet number 106 F of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Ramparts River map sheet number 106 G of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Ontaratué River map sheet number 106 J of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Martin House map sheet number 106 K of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Fort McPherson map sheet number 106 M of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Arctic Red River map sheet number 106 N of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Travaillant Lake map sheet number 106 O of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Canot Lake map sheet number 106 P of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Aklavik map sheet number 107 B of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 3 of the Bell River map sheet number 116 P of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

edition 2 of the Blow River map sheet number 117 A of the National Topographic System, produced at a scale of 1:250,000 by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa;

Commencing at the point of intersection of the Yukon Territory-Northwest Territories boundary with latitude 66°00'00"N at approximate longitude 133°37'00"W;

thence northerly along said boundary to its intersection with the southern boundary of the Inuvialuit Settlement Region at latitude 68°13'00"N and longitude 136°26'45"W;

thence easterly along said boundary to its intersection with the centre line of the Iroquois River at latitude 68°00'00"N and approximate longitude 129°45'43"W;

thence southerly along said centre line of the Iroquois River to its intersection with the centre line of an unnamed stream at approximate latitude 67°57'10"N and approximate longitude 129°43'24"W;

thence southerly along said centre line of said stream to its intersection with longitude 130°01'55"W at approximate latitude 67°40'41"N;

thence southerly along said longitude to its intersection with the centre line of a seismic line at approximate latitude 67°37'22"N;

thence southwesterly in a straight line to the intersection of the east bank of the Mackenzie River with longitude 130°25'00"W at approximate latitude 67°18'35"N;

thence southwesterly in a straight line to the intersection of latitude 67°05'30"N and longitude 130°39'30"W;

thence southwesterly in a straight line to the intersection of latitude 67°00'00"N and longitude 131°12'00"W;

thence southerly in a straight line to the intersection of latitude 66°55'30"N and longitude 131°15'00"W;

thence northwesterly in a straight line to a height of land at approximate latitude 66°59'00"N and approximate longitude 131°44'00"W;

thence southwesterly in a straight line to the intersection of longitude 131°55'00"W with latitude 66°56'00"N;

thence southerly along said longitude to its intersection with latitude 66°33'00"N;

thence west in a straight line to the intersection of latitude 66°33'00"N with longitude 132°00'00"W;

thence south along said longitude to its intersection with the north bank of the north branch of Weldon Creek at approximate latitude 66°14'11"N;

thence southeasterly along said bank of Weldon Creek to latitude 66°08'00"N and approximate longitude 131°36'45"W;

thence southeasterly in a straight line to the intersection of latitude 66°00'00"N and longitude 131°20'00"W;

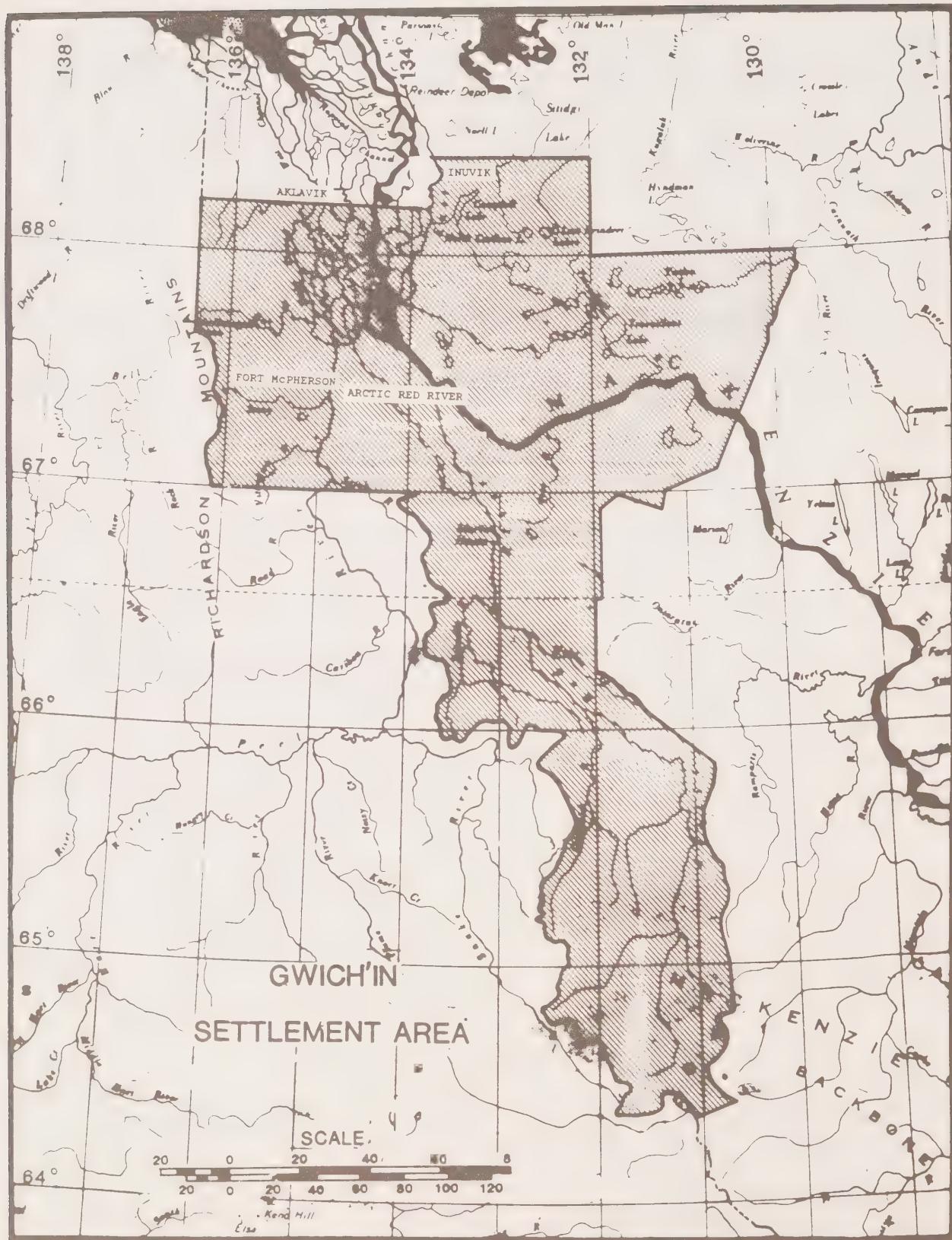
thence southeasterly in a straight line to a height of land between the watersheds of the Arctic Red River drainage system and the Mountain River, Gayna River, Hume River and Ramparts River drainage systems at latitude 65°50'00"N and approximate longitude 130°45'00"W;

thence southerly following the heights of land between the watersheds of the Arctic Red River drainage system and the Mountain River, Gayna River, Hume River and Ramparts River drainage systems to the intersection of latitude 64°23'30"N and approximate longitude 130°41'30"W;

thence southwesterly in a straight line to the intersection of the Yukon Territory-Northwest Territories boundary at latitude 64°20'00"N and approximate longitude 131°04'03"W; and

thence northerly along said boundary to the point of commencement.

MAP OF THE SETTLEMENT AREA



APPENDIX B

SELF-GOVERNMENT FRAMEWORK AGREEMENT

1 OBJECTIVES

- 1.1** Government shall enter into negotiations with the Gwich'in pursuant to this framework agreement with a view to concluding self-government agreements which enable the Gwich'in to govern their affairs and to administer resources, programs and services, as appropriate to the circumstances of the Gwich'in.
- 1.2** Self-government agreements shall be in conformity with the constitution of Canada.
- 1.3** The objectives of self-government agreements shall be to describe the nature, character and extent of self-government, the relationship between government and Gwich'in institutions and to accommodate Gwich'in self-government within the framework of public government.
- 1.4** The objective of this framework agreement is to set out the principles, process, schedule and matters for negotiation in self-government negotiations conducted between government and the Gwich'in, in accordance with the provisions of chapter 5 of this agreement.

2 DEFINITIONS

- 2.1** In the framework agreement, all terms not defined below shall be as defined in the agreement. Terms herein shall have the following meanings:

"Gwich'in First Nation Authority" means a governing body for Gwich'in in any of Aklavik, Arctic Red River, Fort McPherson or Inuvik with powers and responsibilities as set out in self-government agreements; and

"self-government agreement" means an agreement on self-government negotiated pursuant to the framework agreement.

3 PRINCIPLES

- 3.1** Gwich'in self-government may comprise:

- (a) Gwich'in First Nation Authorities with powers and responsibilities, including the necessary legislative capacity, in specified areas of jurisdiction;
- (b) the Gwich'in Tribal Council or its successor with such powers and responsibilities as may be agreed upon by Gwich'in First Nation Authorities; and
- (c) Gwich'in involvement in public government pursuant to self-government agreements.

3.2 Self-government agreements:

- (a) shall set out the powers and responsibilities of Gwich'in First Nation Authorities;
- (b) may set out the powers and responsibilities of the Gwich'in Tribal Council or its successor; and
- (c) may provide for Gwich'in participation in public government institutions and may set out appropriate powers and responsibilities of such institutions in the settlement area.

3.3 Self-government agreements may provide for the devolution or delegation of programs and services to:

- (a) Gwich'in First Nation Authorities;
- (b) the Gwich'in Tribal Council or its successor; and
- (c) those public government institutions in the settlement area provided for in 3.2(c).

3.4 Self-government agreements may provide for Gwich'in First Nation Authorities or the Gwich'in Tribal Council or its successor to exercise powers of a designated Gwich'in organization in accordance with this agreement.

3.5

- (a) Self-government agreements shall take into account the availability of government financial resources.
- (b) Financial arrangements for self-government agreements shall address the need for flexibility, predictability and long-term planning.
- (c) Self-government agreements shall take into account the effective and efficient use of financial resources.

3.6 Government shall consult with the Gwich'in Tribal Council before recommending to Parliament or the Legislative Assembly of the Northwest Territories as the case may be, legislation to enact or amend legislation providing for Gwich'in self-government.

4 MATTERS FOR NEGOTIATION

4.1 Self-government negotiations shall address, and self-government agreements may include, the following matters in a manner not inconsistent with this agreement:

- (a) structures and procedures of Gwich'in First Nation Authorities and the Gwich'in Tribal Council or its successor including the development of Gwich'in First Nation constitutions;
- (b) accountability to Gwich'in of Gwich'in institutions;
- (c) legal status and capacity of Gwich'in First Nation Authorities, the Gwich'in Tribal Council or its successor;
- (d) membership;
- (e) Gwich'in culture and language;

- (f) housing;
- (g) raising of revenue for local purposes, including taxation;
- (h) education and training;
- (i) social services;
- (j) health services;
- (k) roads and traffic;
- (l) local government infrastructure, including programs and services;
- (m) economic development, including tourism;
- (n) child welfare, guardianship and customary adoption;
- (o) wills and estates;
- (p) administration of justice;
- (q) implementation plans and financial arrangements relating to self-government agreements;
- (r) procedures for the amendment of self-government agreements;
- (s) transition from existing Gwich'in institutions to future Gwich'in institutions; and
- (t) matters related to the foregoing, or as may be otherwise agreed.

5 PROCESS AND SCHEDULE

5.1 Government shall enter into negotiations with the Gwich'in in each Gwich'in community where a written request to negotiate is made by a designated Gwich'in organization.

5.2 Prior to commencing negotiations on self-government agreements, the parties to such negotiations shall agree on:

- (a) the order in which the matters to be negotiated are to be addressed;
- (b) the time frame within which negotiations will take place; and
- (c) such other matters as may be necessary or desirable.

APPENDIX C

YUKON TRANSBOUNDARY AGREEMENT

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

AND

THE GWICH'IN TRIBAL COUNCIL

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WHEREAS the Tetlit Gwich'in and the Vuntut Gwich'in First Nation, the Dawson First Nation and the First Nation of Na'cho N'yak Dun entered into an agreement in Vancouver, British Columbia, on February 11, 1990 dealing with the interests of the Tetlit Gwich'in in the Fort McPherson Group Trapping Area (primary use area) and in the area adjacent thereto (secondary use area); and

WHEREAS it is the intention of the parties to respect the provisions of the agreement of February 11, 1990 between the Tetlit Gwich'in and the Yukon First Nations;

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

1.1.1

In this appendix,

"agreement" means the Gwich'in comprehensive land claim agreement;

"appendix" means this Yukon Transboundary Agreement which is appendix C to the agreement;

"bed" of a body of water means the land covered so long by water as to mark it from vegetation, or as to mark a distinct character upon the vegetation where it extends into the water or upon the soil itself;

"community boundary" means, for a municipality or hamlet designated under the *Municipal Act*, R.S.Y. 1986, c. 119, the boundary as set out in that act;

"conservation" means the management of fish and wildlife populations and habitats and the regulation of users to ensure the quality, diversity and long term optimum productivity of fish and wildlife populations, with the primary goal of ensuring a sustainable harvest and its proper utilization;

"construction materials" includes rock, gravel, sand, marl, clay, earth, silt, pumice, volcanic ash and materials derived therefrom or occurring as a constituent part thereof used in the construction and maintenance of public roads and other public works;

"consult" or "consultation" means to provide:

- (a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and
- (c) full and fair consideration by the party obliged to consult of any views presented;

"Council for Yukon Indians" includes any successor to the Council for Yukon Indians and, in the absence of any successor, the Yukon First Nations;

"Crown land" means land vested from time to time in Her Majesty in Right of Canada, whether the administration and control thereof is appropriated to the Commissioner of the Yukon or not, but does not include Tetlit Gwich'in Yukon land;

"decision document" means the document issued by the Tetlit Gwich'in pursuant to 8.2.3, or by government or by both in accordance with the Umbrella Final Agreement;

"designated Tetlit Gwich'in organization" means an organization designated pursuant to chapter 7 of this agreement;

"existing mineral right" means a mineral right, other than a right to locate a claim or an unrecorded right to explore for minerals other than petroleum, existing at the date the affected land became Tetlit Gwich'in Yukon land and includes any renewal or replacement of such a mineral right or a new right described in 3.4.1(d);

"fish" includes

- (a) portions of fish;
- (b) shellfish, crustaceans, marine animals, marine plants and portions thereof;
- (c) the eggs, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals; and
- (d) such fish products and by-products as are prescribed pursuant to section 34 of the *Fisheries Act*, R.S. 1985, c. F-14;

"flooding right" means the right to expropriate provided by laws of general application for constructing, maintaining and operating a hydro-electric or water storage facility;

"government" means the Government of Canada or the Government of the Yukon, or both, depending upon which government or governments have responsibility, from time to time, for the matter in question;

"harvesting" means gathering, hunting, trapping or fishing in accordance with this appendix;

"heritage resources" includes moveable heritage resources, heritage sites and documentary heritage resources;

"heritage site" means an area of land which contains moveable heritage resources or which is of value for aesthetic or cultural reasons;

"Land Titles Office" means the Land Titles Office for the Yukon Land Registration District or its successor;

"law" includes common law;

"laws of general application" means laws of general application as defined by common law;

"legislation" includes acts, regulations, Orders-in-Council and bylaws;

"local government services" means those services generally supplied by local government including, but not limited to, recreational facilities, water, sewage, waste disposal and road maintenance;

"long term optimum productivity" means the productivity required to ensure the long term continuation of a species or population while providing for the needs of Tetlit Gwich'in and other harvesters and non-consumptive users of fish and wildlife in the short term;

"migratory game birds" has the same meaning as in the *Migratory Birds Convention Act*, R.S. 1985, c. M-7;

"mineral right" means any licence, permit or other right to explore for, locate, develop, produce or transport any minerals other than specified substances and to enter on land for those purposes;

"minerals" means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, petroleum and specified substances;

"mines" means mines, opened and unopened;

"Minister" means the Minister or Ministers of government charged by legislation with the responsibility, from time to time, for the exercise of powers in relation to the matter in question;

"natural boundary" means a boundary, at any instant, corresponding to the position of a designated natural feature as it exists at that instant; and the position of such boundary position changes with the natural movements of the feature, so long as those movements are gradual and imperceptible from moment to moment;

"navigable water" means a stream, river, lake, sea or other body of water, used or capable of being used by the public for navigation by boats, kayaks, canoes, rafts or other small craft, or log booms on a continuous or seasonal basis, and includes any parts thereof interrupted by occasional natural obstructions or bypassed by portages;

"new mineral right" means any mineral right other than an existing mineral right;

"parcel" means any particular portion of Tetlit Gwich'in Yukon land;

"Peel River watershed" means the lands and waters of the drainage basin of the Peel River and its tributaries;

"person" means any natural person or artificial entity capable of having rights or obligations and includes government;

"petroleum" means oil or gas;

"primary use area" means the Fort McPherson Group Trapping Area, as described in annex A to this appendix, which was established by the Trapping Concession Boundary Regulation, Order-in-Council 1989/94, made pursuant to the *Wildlife Act*, R.S.Y. 1986, c. 178, ss. 153 and 178;

"property taxes" means all municipal tax and tax on real property but, for greater certainty, does not include income tax, tax on goods and services, sales tax or tax on transfer of real property;

"quarry" means a pit, excavation or other place made by any means for the purpose of removing construction material or a site identified for such purposes, and includes works, machinery, plants and buildings below or above ground belonging to or used in connection with a quarry;

"reserve" means a reserve as defined in the *Indian Act*, R.S. 1985, c. I-15;

"right to work" includes the right to enter on, use and occupy the land or as much thereof and to such extent as may be necessary for the purpose of the working and extraction of minerals;

"road" means a territorial highway designated in section 8(2) of the Highways Regulations Order-in-Council 1979/79 as amended by Order-in-Council 1987/100 and having a prescribed right of way width not exceeding 60 metres;

"secondary use area" means those lands described in annex A to this appendix;

"settlement legislation" means the legislation described in 3.1.3 of this agreement and "the date of settlement legislation" means the date when the settlement legislation comes into force;

"specified substances" means any of carving stone, flint, limestone, marble, gypsum, shale, slate, clay, sand, gravel, construction stone, sodium chloride, volcanic ash, earth, soil, diatomaceous earth, ochre, marl and peat;

"specified substances right" means the right of the Tetlit Gwich'in, pursuant to 3.1.3, to take and use, without payment of any royalty, a specified substance;

"Surface Rights Board" means the board described in 6.1.1;

"Tetlit Gwich'in" means a Gwich'in who:

- (a) resides in the Peel River watershed, including in the community of Fort McPherson, Northwest Territories, or
- (b) is descended from an aboriginal person who used or occupied the Peel River watershed on or before December 31, 1921,

and means, where the context requires, the collectivity of all such individuals, and designated Tetlit Gwich'in organizations;

"Tetlit Gwich'in burial site" means a place outside a recognized cemetery where the remains of a cultural ancestor of the Tetlit Gwich'in have been interred, cremated or otherwise placed;

"Tetlit Gwich'in Yukon land" means lands, described in annex B, to which the Tetlit Gwich'in received title pursuant to 3.1;

"trade" means to barter, buy, sell, give or receive;

"traditional territory" means, with respect to each Yukon First Nation and each Yukon Indian person enrolled in that Yukon First Nation's final agreement, the geographic area within the Yukon identified as that Yukon First Nation's traditional territory on the map referred to in the Umbrella Final Agreement or as amended in the Yukon First Nation final agreement;

"Umbrella Final Agreement" means the proposed Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon dated March 31, 1990 as amended from time to time;

"waterfront right of way" means the public right of way along navigable water described in 4.7;

"wildlife" means a vertebrate animal of any species or sub-species that is wild in the Yukon, but does not include fish, and does not include exotic species or transplanted populations;

"Yukon First Nation" means one of the following:

Carcross/Tagish First Nation;
Champagne and Aishihik First Nations;
Dawson First Nation;
Kluane First Nation;
Kwanlin Dun First Nation;
Liard First Nation;
Little Salmon/Carmacks First Nation;
First Nation of Na'cho N'yak Dun;
Ross River Dena Council;
Selkirk First Nation;
Ta'an Kwach'an Council;
Teslin Tlingit Council;
Vuntut Gwich'in First Nation; or
White River First Nation;

"Yukon First Nations" means all of the Yukon First Nations defined as a Yukon First Nation;

"Yukon First Nation final agreement" means a comprehensive land claim agreement for a Yukon First Nation that includes provisions specific to that Yukon First Nation and incorporates the provisions of the Umbrella Final Agreement;

"Yukon Indian people" means more than one Yukon Indian person; and

"Yukon Indian person" means a person enrolled under one of the Yukon First Nation final agreements in accordance with criteria established in the Umbrella Final Agreement.

2

GENERAL PROVISIONS

2.1.1 This appendix sets out certain rights of the Tetlit Gwich'in within the Yukon.

2.1.2 (a) This appendix may be amended from time to time by the parties to the appendix and such amendments may include the addition of further parties.
(b) The parties to this appendix shall consult a Yukon First Nation with respect to any amendment to this appendix which may affect that Yukon First Nation.

2.1.3 Tetlit Gwich'in Yukon land shall be deemed not to be land reserved for Indians within the meaning of section 91(24) of the *Constitution Act, 1867*, nor reserves.

2.1.4 The Supreme Court of the Yukon shall have jurisdiction in respect of any action or proceeding arising out of this appendix.

2.1.5 (a) In 2.1.5, "appendix" means this appendix at the date of settlement legislation.
(b) Where there is any inconsistency or conflict between a provision of this appendix and a provision in any other comprehensive land claim agreement, with respect to the application of such provisions within the primary use area, the provisions of this appendix shall prevail to the extent of the inconsistency or conflict.
(c) Where there is any inconsistency or conflict between a provision of this appendix and a provision in any other comprehensive land claim agreement, with respect to the application of such provisions in any area other than the primary use area, the provisions of the other agreement shall prevail over the provisions of this appendix to the extent of the inconsistency or conflict.

3

TETLIT GWICH'IN YUKON LAND

3.1 AMOUNT AND TENURE

3.1.1 (a) The Tetlit Gwich'in shall receive title to 1,554 square kilometres (approximately 600 square miles) of land (hereinafter referred to as "Tetlit Gwich'in Yukon land") in the primary use area.

(b) Tetlit Gwich'in Yukon land shall not be settlement land as defined in 18.1.2 of this agreement.

3.1.2 (a) Title to Tetlit Gwich'in Yukon land, other than Tetlit Gwich'in Yukon land in (b), shall vest in the Gwich'in Tribal Council by virtue of settlement legislation at the date thereof.

(b) Title to site specific Tetlit Gwich'in Yukon land shall vest in the Gwich'in Tribal Council when the plans of survey of such lands have been deposited in the Land Titles Office pursuant to 3.3.3.

(c) In (b), "site specific Tetlit Gwich'in Yukon land" means parcels of Tetlit Gwich'in Yukon land identified by the letter "S" in annex B, which will be selected after the date of settlement legislation from larger blocks of Crown land which have been withdrawn from disposition pursuant to the *Territorial Lands Act*, R.S. 1985, c. T-7.

3.1.3 Tetlit Gwich'in Yukon land shall be held in fee simple title reserving therefrom the mines and minerals and the right to work the mines and minerals but the fee simple title shall include the specified substances right.

3.1.4 Tetlit Gwich'in Yukon land may not be conveyed to any person except to government in exchange for other land or to a designated Gwich'in organization. This provision shall not be interpreted to prevent the Tetlit Gwich'in from granting leases or licences to persons who are not Tetlit Gwich'in to use or occupy Tetlit Gwich'in Yukon land.

3.1.5 Tetlit Gwich'in Yukon land is not subject to seizure or sale under court order, writ of execution or any other process whether judicial or extra judicial.

3.1.6 Tetlit Gwich'in Yukon land shall not be mortgaged, charged or given as security.

3.1.7 No person may acquire, by prescription, an estate or interest in Tetlit Gwich'in Yukon land.

3.1.8 Nothing in this chapter shall be construed to preclude the Tetlit Gwich'in from acquiring or holding interests in lands other than Tetlit Gwich'in Yukon land.

3.2 REGISTRATION OF TITLE

3.2.1 The Gwich'in Tribal Council shall register in the Land Titles Office as soon as practicable its title to Tetlit Gwich'in Yukon land.

3.2.2 No fee or charge shall be payable in respect of the initial registration by the Gwich'in Tribal Council of its title to Tetlit Gwich'in Yukon land.

3.3 MAPS AND DESCRIPTIONS

3.3.1 (a) Descriptions of Tetlit Gwich'in Yukon land and descriptions setting out any reservations, exceptions, restrictions, easements, rights of way or special conditions that the parties agree apply to a parcel of Tetlit Gwich'in Yukon land are set out in annex B.

(b) The maps which form part of the descriptions in (a) are recorded in the Canada Lands Surveys Records, Department of Energy, Mines and Resources, Ottawa, as number 74254 C.L.S.R.

3.3.2 The boundaries of the Tetlit Gwich'in Yukon land shall be defined pursuant to chapter 11 of this appendix.

3.3.3 Plans of survey confirmed in accordance with chapter 11 of this appendix shall be deposited in the Land Titles Office.

3.3.4 Plans of survey confirmed under chapter 11 of this appendix replace for all purposes any prior map or description of a parcel of Tetlit Gwich'in Yukon land dealt with by the survey.

3.4 TETLIT GWICH'IN YUKON LAND

3.4.1 The rights and titles of the Gwich'in Tribal Council in Tetlit Gwich'in Yukon land are subject to the following exceptions and reservations:

(a) any right, title or interest less than the entire fee simple therein existing at the date the land became Tetlit Gwich'in Yukon land;

(b) any licence, permit and other right issued by government for the use of land or other resources existing at the date the land became Tetlit Gwich'in Yukon land;

(c) any renewal or replacement, after the date the land became Tetlit Gwich'in Yukon land, of a right, title or interest described in (a) or a licence, permit or other right described in (b);

(d) after the date the land became Tetlit Gwich'in Yukon land, any new licence, permit or other right in respect of

(i) petroleum which may be granted as of right to a person holding a right, title or interest described in (a), (b) or (c);

(ii) mines and minerals which may be granted pursuant to the *Yukon Quartz Mining Act*, R.S. 1985, c. Y-4, or the *Yukon Placer Mining Act*, R.S. 1985, c. Y-3, to a person holding a right, title, or interest described in (a), (b) or (c);

(e) any right of way, easement, reservation, exception or restriction existing at the date the land became Tetlit Gwich'in Yukon land;

(f) any special condition agreed to by the parties during land selection;

(g) any waterfront right of way; and

(h) the rights granted to government in a quarry identified pursuant to 15.2.

3.5 TETLIT GWICH'IN MANAGEMENT AND CONTROL

3.5.1 Subject to the provisions of this appendix and legislation, the Tetlit Gwich'in shall manage and control the use of Tetlit Gwich'in Yukon land, including:

- (a) the development and administration of land management programs and policies; and
- (b) the charging of rents or other fees for the use and occupation of Tetlit Gwich'in Yukon land.

3.6 ADMINISTRATION BY GOVERNMENT

3.6.1 For the purposes of 3.6, "encumbering right" means every licence, permit or other right, and every right, title or interest described in 3.4.

3.6.2 Subject to 4.3.6, government shall continue to administer every encumbering right including granting renewals or replacements described in 3.4.1(c) and new rights described in 3.4.1(d) in the public interest and in accordance with the legislation which would apply if Tetlit Gwich'in Yukon land were Crown land.

3.6.3 Where Tetlit Gwich'in Yukon land is subject to a surface lease, existing at the date the affected land became Tetlit Gwich'in Yukon land, held by a mineral right holder, government shall account for and pay to the Gwich'in Tribal Council as soon as practicable from time to time, any non-refunded rents received by government which were payable after the date the land became Tetlit Gwich'in Yukon land in respect of that existing surface lease held by the mineral right holder.

3.6.4 Subject to 3.6.3, government shall retain for its own benefit any fees, charges or other payments received in respect of any encumbering right.

3.6.5 Government shall not have any fiduciary obligation to the Gwich'in Tribal Council for the exercise of any discretionary or other power in relation to the administration of any encumbering right.

3.6.6 Government shall indemnify and forever save harmless the Gwich'in Tribal Council from and against all suits and actions, causes of action, claims, demands and damages by any person arising from the continuing administration of the encumbering right by government.

3.6.7 Government shall consult with the Gwich'in Tribal Council before exercising any discretion to renew or replace an encumbering right, to issue a new encumbering right or to set any royalty, rent or fee described in 3.6.3.

3.6.8 If legislation is amended to authorize government to increase the term permitted for an encumbering right, government shall not increase the term of that encumbering right pursuant to that amendment without the prior consent of the Gwich'in Tribal Council.

3.6.9 Subject to the consent of the Minister, the Gwich'in Tribal Council and the holder of an encumbering right may agree that the right be cancelled and replaced by an interest provided by the Gwich'in Tribal Council.

3.6.10 The Minister may only refuse to consent under 3.6.9 if:

- (a) the holder of the encumbering right is in default of any obligation to government or has outstanding unsatisfied liabilities to government pursuant to the interest;
- (b) the encumbering right was granted under the *Yukon Quartz Mining Act*, R.S. 1985, c. Y-4, and there is no "Certificate of Improvements" issued thereunder or equivalent certificate issued under any successor legislation;
- (c) the encumbering right is a claim granted under the *Yukon Placer Mining Act*, R.S. 1985, c. Y-3, and there is no plan of survey of the claim approved in accordance with that act or equivalent approval under successor legislation; or
- (d) there is a person claiming an interest in the encumbering right.

3.7 DISCLOSURE OF INTERESTS IN TETLIT GWICH'IN YUKON LAND

3.7.1 Canada shall make available to the Gwich'in Tribal Council data and information relating to resources and to existing rights, titles and interests on Tetlit Gwich'in Yukon land as soon as practicable after the date of settlement legislation.

3.8 BEDS OF WATERBODIES

3.8.1 Unless otherwise provided in the description set out in annex B, the portions of the bed of a lake, river or other waterbody within the boundaries of a parcel of Tetlit Gwich'in Yukon land shall be Tetlit Gwich'in Yukon land.

3.8.2 Unless otherwise provided in the description set out in annex B, the bed of a lake, river or other waterbody which is contiguous with a boundary of a parcel of Tetlit Gwich'in Yukon land shall not be Tetlit Gwich'in Yukon land.

4

ACCESS

4.1 GENERAL

4.1.1 Laws of general application, in respect of access to and use incidental thereto of privately held land, shall apply to Tetlit Gwich'in Yukon land except as otherwise specified in this appendix.

4.1.2 (a) Government and the Gwich'in Tribal Council may agree to amend, revoke or reinstate a right of access provided by this appendix to address special circumstances in respect of a specific parcel of Tetlit Gwich'in Yukon land.

(b) A change to a right of access pursuant to (a) shall not be considered an amendment for the purposes of 2.1.2(a).

(c) Any change to a right of access pursuant to (a) shall be registered in the Land Titles Office in respect of the affected parcel of land.

4.1.3 The Gwich'in Tribal Council owes the same duty of care to a person exercising a right of access on Tetlit Gwich'in Yukon land pursuant to this appendix as the Crown owes to a person on unoccupied Crown land.

4.1.4 Nothing in this chapter imposes an obligation on the Gwich'in Tribal Council or government to manage or maintain any trail or other route of access.

4.1.5 Any person may enter upon Tetlit Gwich'in Yukon land in an emergency but when damage is caused the person shall report to the Gwich'in Tribal Council the location thereof as soon as practicable thereafter and shall be liable for significant damage to Tetlit Gwich'in Yukon land or to any improvement on such lands as a result of the entry.

4.1.6 A right of access provided by 4.3.1, 4.3.2, 4.6.5 and 4.7.3 is subject to the conditions that there shall be no:

- (a) significant damage to Tetlit Gwich'in Yukon land or to improvements on Tetlit Gwich'in Yukon land;
- (b) mischief committed on Tetlit Gwich'in Yukon land;
- (c) significant interference with the use and peaceful enjoyment of Tetlit Gwich'in Yukon land by the Tetlit Gwich'in;
- (d) fee or charge payable to the Tetlit Gwich'in; and
- (e) compensation for damage other than for significant damage.

4.1.7 A person who fails to comply with the conditions in 4.1.6 (a), (b) or (c) shall be considered a trespasser with respect to that incident of access.

4.1.8

Subject to chapter 5 of this appendix, unless the Gwich'in Tribal Council otherwise agrees, any route of access on Tetlit Gwich'in Yukon land which may be established or improved after the date of settlement legislation shall remain Tetlit Gwich'in Yukon land and shall not be designated, by operation of law or otherwise, as a highway or public road, notwithstanding that the route is established or improved:

- (a) for the benefit of any person; or
- (b) using funds or other resources provided directly or indirectly by government for the establishment or improvement of such route.

4.2

ACCESS TO CROWN LAND

4.2.1

The Tetlit Gwich'in including a designated Tetlit Gwich'in organization have a right of access without the consent of government to enter, cross and stay on Crown land and to use Crown land incidental to such access for a reasonable period of time for all non-commercial purposes if:

- (a) the access is of a casual and insignificant nature; or
- (b) the access is for the purpose of harvesting fish and wildlife in accordance with chapter 12 of this appendix.

4.2.2

The Tetlit Gwich'in including a designated Tetlit Gwich'in organization have a right of access without the consent of government to cross and make necessary stops on Crown land to reach adjacent Tetlit Gwich'in Yukon land for commercial purposes if:

- (a) the access is of a casual and insignificant nature; or
- (b) the route used is a traditional route of Yukon Indian people or of the Tetlit Gwich'in or is generally recognized and is being used for access on a regular basis, whether year round or intermittently, and the exercise of the right of access does not result in a significant alteration in the use being made of that route.

4.2.3

A right of access in 4.2.1 or 4.2.2 does not apply to Crown land:

- (a) which is subject to an agreement for sale or a surface licence or lease except:
 - (i) to the extent the surface licence or lease permits public access; or
 - (ii) where the holder of the interest allows access; or
- (b) where access or use by the public is limited or prohibited.

4.2.4

A right of access provided by 4.2.1 or 4.2.2 shall be subject to the conditions that there shall be no:

- (a) significant damage to the land or to improvements on the land;
- (b) mischief committed on the land;
- (c) significant interference with the use and peaceful enjoyment of the land by other persons;

- (d) fee or charge payable to government; and
- (e) compensation for damage other than significant damage.

4.2.5 A Tetlit Gwich'in or a designated Tetlit Gwich'in organization who fails to comply with the conditions in 4.2.4(a), (b) or (c) shall forfeit the rights provided in 4.2.1 or 4.2.2, as the case may be, with respect to that incident of access.

4.2.6 Government shall not alienate Crown land abutting any block of Tetlit Gwich'in Yukon land so as to deprive such block of access from adjacent Crown land or from a highway or public road.

4.2.7 Nothing in this chapter shall be construed so as to deprive the Tetlit Gwich'in of the rights or privileges of access to Crown land available to the public.

4.3 GENERAL ACCESS

4.3.1 A person has a right of access, without the consent of the Tetlit Gwich'in, to enter, cross and make necessary stops on Tetlit Gwich'in Yukon land to reach adjacent land for commercial and non-commercial purposes if:

- (a) the access is of a casual and insignificant nature; or
- (b) the route used is generally recognized and was being used for access on a regular basis, whether year round or intermittently, either,
 - (i) prior to the date referred to in 1.8(c) of appendix D to this agreement, or
 - (ii) where the land becomes Tetlit Gwich'in Yukon land after the date of settlement legislation, on the date the land becomes Tetlit Gwich'in Yukon land,

on the condition that the exercise of the right of access does not result in a significant alteration being made of that route.

4.3.2 A person has a right of access, without the consent of the Tetlit Gwich'in, to enter, cross and stay on Tetlit Gwich'in Yukon land for a reasonable period of time for all non-commercial recreational purposes.

4.3.3 Unless otherwise provided in this appendix, a person has a right of access to enter, cross and make necessary stops on Tetlit Gwich'in Yukon land to reach adjacent land for commercial and non-commercial purposes with the consent of the Tetlit Gwich'in or, failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

4.3.4 The Surface Rights Board shall not make an order under 4.3.3 unless the person seeking access satisfies the Board that:

- (a) such access is reasonably required; and
- (b) such access is not also practicable and reasonable across Crown land.

4.3.5 Subject to 4.3.6 and 3.6, the holder of a licence, permit or other right of access to or across Tetlit Gwich'in Yukon land for commercial or non-commercial purposes which was in existence either:

- (a) on the date of settlement legislation; or
- (b) where the land becomes Tetlit Gwich'in Yukon land after the date of settlement legislation, on the date the land became Tetlit Gwich'in Yukon land,

shall be entitled to exercise the rights granted by the licence, permit or other right of access including those granted by a renewal or replacement thereof as if the land had not become Tetlit Gwich'in Yukon land.

4.3.6 Any change in the terms or conditions relating to access of a licence, permit or other right of access described in 4.3.5, other than a renewal or replacement thereof, shall require the consent of the Tetlit Gwich'in or, failing consent, an order of the Surface Rights Board setting out the terms and conditions of access.

4.3.7 The Tetlit Gwich'in or any person may refer a dispute concerning the interpretation, application or alleged violation of 4.3.1, 4.3.2 or of any condition established pursuant to 4.6 affecting 4.3.1 or 4.3.2 to the Surface Rights Board for resolution.

4.3.8 During land selection it may be agreed to limit the application of 4.3.1(b) in respect of any particular route.

4.4 GOVERNMENT ACCESS

4.4.1 Government, its agents and contractors shall have a right of access to enter, cross and stay on Tetlit Gwich'in Yukon land and use natural resources incidental to such access to deliver, manage and maintain government programs and projects including, but not limited to, the necessary alterations of land and watercourses by earthmoving equipment for routine and emergency maintenance of transportation corridors.

4.4.2 A person authorized by law to provide utilities for public purposes including electricity, telecommunications and municipal services shall have a right of access to enter, cross and stay on Tetlit Gwich'in Yukon land to carry out site investigations, assessments, surveys and studies in relation to proposed services after consultation with the Tetlit Gwich'in prior to exercising such access.

4.4.3 The right of access provided in 4.4.1 and 4.4.2 shall be subject to the conditions that there shall be no:

- (a) mischief committed on Tetlit Gwich'in Yukon land;
- (b) fee or charge payable to the Tetlit Gwich'in; and
- (c) unnecessary interference with the use and peaceful enjoyment of Tetlit Gwich'in Yukon land by the Tetlit Gwich'in.

4.4.4 Any person exercising a right of access pursuant to 4.4.1 and 4.4.2 shall be liable only for significant damage to Tetlit Gwich'in Yukon land and any improvements on Tetlit Gwich'in Yukon land caused by the exercise of such right of access. Significant damage does not include necessary alteration of Tetlit Gwich'in Yukon land or watercourses required to maintain transportation corridors referred to in 4.4.1.

4.4.5 The right of access provided in 4.4.1 and 4.4.2 may be exercised:

- (a) for a period of no more than 120 consecutive days for any single program or project without the consent of the Tetlit Gwich'in except that notice, where reasonable, shall be given; and
- (b) for a period of more than 120 consecutive days with the consent of the Tetlit Gwich'in or, failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

4.4.6 The Surface Rights Board shall not make an order under 4.4.5(b) unless the person seeking access satisfies the Board that:

- (a) such access is reasonably required; and
- (b) such access is not also practicable and reasonable across Crown land.

4.4.7 Nothing in this chapter shall be construed to limit the lawful authority of government to carry out inspections and enforce law on Tetlit Gwich'in Yukon land.

4.5 MILITARY ACCESS

4.5.1 In addition to the right of access provided by 4.4.1, the Department of National Defence has a right of access to Tetlit Gwich'in Yukon land for military manoeuvres with the consent of the Tetlit Gwich'in with respect to contact persons, areas, timing, environmental protection, protection of wildlife and habitat, land use rent and compensation for damage caused to Tetlit Gwich'in Yukon land and improvements and personal property thereon or, failing consent, with an order of the Surface Rights Board as to terms and conditions with respect to such matters.

4.5.2 Nothing in 4.5.1 shall be construed to limit the authority of the Department of National Defence to enter, cross, stay on or use Tetlit Gwich'in Yukon land in accordance with the *National Defence Act*, R.S. 1985, c. N-5.

4.5.3 Government shall give reasonable advance notice of military exercises or operations to inhabitants of any area to be affected.

4.6 CONDITIONS OF ACCESS

4.6.1 If the Tetlit Gwich'in wish to establish terms and conditions for the exercise of a right of access provided:

- (a) by 4.3.1, 4.3.2, 4.7.3, 14.3.1, 14.4.1 or 14.4.2; or
- (b) by 4.4.1 or 4.4.2 where the right of access is for a period of no more than 120 consecutive days;

the Tetlit Gwich'in and government shall attempt to negotiate the terms and conditions.

4.6.2 Failing agreement pursuant to 4.6.1, the Tetlit Gwich'in may refer the matter to the Surface Rights Board. The Surface Rights Board may establish terms and conditions only for the exercise of a right of access which specify seasons, times, locations, method or manner of access.

4.6.3 Unless government and the Tetlit Gwich'in otherwise agree, a condition established pursuant to 4.6.2 affecting the exercise of a right of access shall be established only to:

- (a) protect the environment;
- (b) protect fish and wildlife or their habitat;
- (c) reduce conflicts with traditional and cultural uses of Tetlit Gwich'in Yukon land by the Tetlit Gwich'in or a Tetlit Gwich'in; or
- (d) protect the use and quiet enjoyment of land used for communities and residences.

4.6.4 A condition established pursuant to 4.6.2 affecting the exercise of a right of access shall not:

- (a) restrict law enforcement or any inspection authorized by law;
- (b) impose a fee or charge for the exercise of that right of access; or
- (c) unreasonably restrict that right of access.

4.6.5 An outfitting concession holder has the right of access to cross and to make necessary stops on Tetlit Gwich'in Yukon land to reach the holder's outfitting area without the consent of the Tetlit Gwich'in. The outfitting concession holder's right of access shall include the right to erect temporary camps and to graze horses incidental to such access, and to travel over the land with employees and clients and their equipment but shall not include the right to hunt thereon or to erect any permanent camp thereon.

4.6.6 The rights of access provided by 4.6.5 are subject to the conditions that there shall be no:

- (a) significant damage to Tetlit Gwich'in Yukon land or to improvements on Tetlit Gwich'in Yukon land;
- (b) mischief committed on Tetlit Gwich'in Yukon land;
- (c) significant interference with the use and peaceful enjoyment of Tetlit Gwich'in Yukon land by the Tetlit Gwich'in;
- (d) fee or charge payable to the Tetlit Gwich'in; and
- (e) compensation for damage other than significant damage.

4.6.7 A person who fails to comply with the conditions in 4.6.6 (a), (b) or (c) shall be considered a trespasser with respect to that incident of access.

4.7 WATERFRONT RIGHT OF WAY

4.7.1 Unless otherwise set out in annex B on a case by case basis, there shall be a waterfront right of way 30 metres in width measured landward from the natural boundaries within Tetlit Gwich'in Yukon land of all navigable waters which abut or are within Tetlit Gwich'in Yukon land.

4.7.2 The uses allowed upon the waterfront right of way may be varied or prohibited to accommodate special circumstances and if so varied or prohibited, the variation or prohibition is as set out in annex B.

4.7.3 Subject to 4.1.5, any person has a right of access without the consent of the Tetlit Gwich'in to use a waterfront right of way for travel and for non-commercial recreation, including camping, and for sport fishing, and to use standing dead or deadfall firewood incidental to such use.

4.7.4 Except for hunting migratory game birds if permitted by and in accordance with law, the right of access in 4.7.3 shall not be construed to permit harvesting wildlife at any time.

4.7.5 Any person has a right of access to use a waterfront right of way for commercial recreation purposes with the consent of the Tetlit Gwich'in or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of the access.

4.7.6 The Surface Rights Board shall not make an order under 4.7.5 unless the person seeking access satisfies the Board that:

- (a) such access is reasonably required; and
- (b) such access is not also practicable and reasonable across Crown land.

4.7.7 Subject to 4.7.8, no person shall establish any permanent camp or structure on a waterfront right of way without the consent of government and the Tetlit Gwich'in.

4.7.8 The Tetlit Gwich'in have a right to establish a permanent camp or structure on a waterfront right of way on Tetlit Gwich'in Yukon land, provided that:

- (a) the permanent camp or structure does not substantially alter the public right of access under 4.7.3; or
- (b) there is a reasonable alternate public right of access for the purposes set out in 4.7.3.

4.7.9 Any dispute as to whether the conditions set out in 4.7.8(a) and (b) are met may be referred to the Surface Rights Board by government or the Tetlit Gwich'in.

4.7.10 For purposes of 4.7.9, the Surface Rights Board shall have all the powers of an arbitrator under chapter 18 of this appendix.

5

EXPROPRIATION

5.1

DEFINITIONS

5.1.1

In this chapter,

"authority" means the government or any other entity authorized by legislation to expropriate land;

"cost of construction" for a proponent in respect of a hydro-electric or water storage project means the cost of construction of civil structures; cost of reservoir and site clearing; cost of construction of access; electrical and mechanical costs; cost of construction of transmission to grid; design, including the cost of socio-economic and environmental studies required for the project application; and engineering and construction management costs; and

"land" includes any interest in land recognized in law.

5.2

GENERAL

5.2.1

The objective of this chapter is, in recognition of the fundamental importance of maintaining the geographic integrity of Tetlit Gwich'in Yukon land, to ensure that development requiring expropriation shall avoid Tetlit Gwich'in Yukon land where possible and practicable.

5.2.2

This chapter applies only to the expropriation of an interest in Tetlit Gwich'in Yukon land recognized in law and held by the Gwich'in Tribal Council.

5.3

PROCEDURES FOR EXPROPRIATION

5.3.1

An authority shall negotiate with the Tetlit Gwich'in the location and extent of Tetlit Gwich'in Yukon land to be acquired or expropriated.

5.3.2

Subject to this chapter, an authority may expropriate Tetlit Gwich'in Yukon land in accordance with laws of general application.

5.3.3

When agreement of the Tetlit Gwich'in pursuant to 5.3.1 is not obtained, the following procedures shall apply:

- (a) any expropriation of Tetlit Gwich'in Yukon land shall require the approval of the Governor in Council or the Commissioner in Executive Council as the case may be;
- (b) notice of the intention of any authority to seek approval under (a) shall be given to the Tetlit Gwich'in by the authority; and
- (c) notice of the intention shall not be given until the public hearing process under 5.5 or the public hearing in accordance with legislation has been completed.

5.4

PROCEDURES FOR COMPENSATION

5.4.1

An authority shall negotiate with the Tetlit Gwich'in compensation for Tetlit Gwich'in Yukon land being expropriated or acquired, pursuant to this chapter.

5.4.2 When the agreement of the Tetlit Gwich'in pursuant to 5.4.1 is not obtained, the following provisions shall apply:

- (a) the Surface Rights Board shall determine any dispute over compensation upon an application by either the authority or the Tetlit Gwich'in, except where the expropriation is pursuant to the *National Energy Board Act*, R.S. 1985, c. N-7;
- (b) compensation ordered by the Surface Rights Board may be,
 - (i) upon request by the Tetlit Gwich'in, and, if available and identified by the Tetlit Gwich'in, land of the authority within the primary use area,
 - (ii) money,
 - (iii) other forms of compensation, or
 - (iv) any combination of above;
- (c) when the Tetlit Gwich'in request land to be all or part of the compensation, the Surface Rights Board shall
 - (i) determine whether the authority holds land identified by the Tetlit Gwich'in which is within the primary use area and whether that land is available,
 - (ii) determine the value, in accordance with (g), of the authority's land which is available,
 - (iii) order the authority to transfer to the Gwich'in Tribal Council the amount of available land necessary to provide compensation, and
 - (iv) subject to (d), where land transferred to the Tetlit Gwich'in pursuant to (c)(iii) and (d)(iii) is not sufficient to provide compensation in land as requested, order the balance of compensation to be in the form of (b)(ii) or (iii) or both;
- (d) if the expropriating authority is not government and the Surface Rights Board has determined there is not sufficient available land for the purposes of (c),
 - (i) the Board shall so notify government and thereafter government shall be a party to the proceedings,
 - (ii) the Board shall determine whether government holds available land which is contiguous to the Tetlit Gwich'in Yukon land and within the primary use area, whether that land is available and if so the value of that available land in accordance with (g),
 - (iii) the Board shall order government to transfer to the Gwich'in Tribal Council available land up to the value which, in addition to the value of land provided under (c), is necessary to provide compensation in land as requested by the Tetlit Gwich'in under (c), and
 - (iv) the authority shall pay to government the value of the land provided under (d)(iii) and all costs of government associated with the transfer;

- (e) the Surface Rights Board shall consider the matters set out in 6.2.1 when assessing the value of expropriated Tetlit Gwich'in Yukon land;
- (f) land is not available for the purposes of (c) or (d), if it is
 - (i) land subject to an agreement for sale or a lease containing an option to purchase, unless both government and the person holding such an interest in the land consent,
 - (ii) land subject to a lease, unless both government and the lessee consent,
 - (iii) a highway or highway right of way,
 - (iv) land within 30 metres of the boundary line between the Yukon and Alaska, the Yukon and the Northwest Territories, or the Yukon and British Columbia,
 - (v) land determined by the Surface Rights Board to be occupied or used by the expropriating authority, any federal or territorial department or agency, or by a municipal government except with the consent of that expropriating authority, department, agency or municipal government,
 - (vi) land determined by the Surface Rights Board to be required for future use by the expropriating authority or any federal or territorial department or agency, or by a municipal government except with the consent of that expropriating authority, department, agency or municipal government,
 - (vii) land which the Surface Rights Board determines would, if provided to the Tetlit Gwich'in, unreasonably limit the expansion of Yukon communities,
 - (viii) land which the Surface Rights Board determines would, if provided to the Tetlit Gwich'in, unreasonably limit access for any person to navigable water or highways, or
 - (ix) such other land as the Surface Rights Board in its discretion determines is not available;
- (g) in determining the value of the land to be provided by an authority, the Surface Rights Board shall consider, in addition to the market value of the land,
 - (i) the value of fish and wildlife harvesting and of gathering to the Tetlit Gwich'in,
 - (ii) any potential effect of the land to be provided by an authority upon other Tetlit Gwich'in Yukon land,
 - (iii) any cultural or other special value of the land to the Tetlit Gwich'in, and
 - (iv) such other factors as may be permitted by the legislation establishing the Board; and

(h) land provided or ordered as compensation under this chapter which is within the primary use area shall be transferred to the Gwich'in Tribal Council in fee simple reserving therefrom the mines and minerals and the right to work the mines and minerals but the fee simple title shall include the specified substances right.

5.4.3 Nothing in this chapter prevents the authority and the Tetlit Gwich'in from agreeing that land outside the primary use area be part of compensation for expropriation. Land outside the primary use area shall not become Tetlit Gwich'in Yukon land, unless otherwise agreed to by government, the Tetlit Gwich'in and the Yukon First Nation in whose traditional territory the land is located.

5.5 PUBLIC HEARINGS

5.5.1 Where the Tetlit Gwich'in object to an expropriation, there shall be a public hearing in respect of the location and extent of the land to be acquired. The procedure for the public hearing shall include the following:

- (a) notice to the Gwich'in Tribal Council and the public;
- (b) an opportunity for the Tetlit Gwich'in and the public to be heard;
- (c) discretion in the holder of the hearing to award costs, including interim costs, to the Tetlit Gwich'in; and
- (d) the preparation and submission of a report by the hearing panel to the Minister.

5.5.2 Nothing in this chapter shall be construed to eliminate or duplicate any legislative requirement for a public hearing in respect of expropriation.

5.6 EXPROPRIATION PURSUANT TO THE NATIONAL ENERGY BOARD ACT

5.6.1 Where Tetlit Gwich'in Yukon land is expropriated pursuant to the *National Energy Board Act*, R.S. 1985, c. N-7, this chapter applies except that the powers of the Surface Rights Board shall be exercised by the board, committee, panel or other body authorized by the *National Energy Board Act*, R.S. 1985, c. N-7, to settle disputes in respect of expropriation.

5.6.2 The board, committee, panel or other body referred to under 5.6.1 shall include at least one nominee of the Tetlit Gwich'in.

5.7 EXPROPRIATION FOR HYDRO-ELECTRIC AND WATER STORAGE RIGHTS

5.7.1 An authority exercising a flooding right over Tetlit Gwich'in Yukon land shall pay compensation pursuant to this chapter except that, in assessing compensation for land and improvements, the Surface Rights Board shall not consider 5.4.2(g)(iii) or 6.2.1(h) and the sum of such compensation to the Tetlit Gwich'in and all affected Yukon First Nations for all improvements shall not exceed three percent of the cost of construction of that hydro-electric or water storage project.

6

SURFACE RIGHTS BOARD

6.1

GENERAL

6.1.1

If a Surface Rights Board ("the Board") is established having jurisdiction in the Yukon, it shall have, with respect to any matter referred to the Board by this appendix, the following jurisdiction, powers and responsibilities:

- (a) to establish the terms and conditions of a right of access or use referred to the Board, whether or not compensation is included;
- (b) to award compensation for the exercise of a right of access or use of the surface, and for damage resulting from access or use of the surface, and from the activities of the person having the interest in the mines and minerals and to specify the time and method of payment thereof and to determine the amount of such compensation;
- (c) to determine compensation for Tetlit Gwich'in Yukon land expropriated and to carry out the responsibilities set out in chapter 5 of this appendix;
- (d) to determine, where required by this appendix, whether access is reasonably required and whether that access is not also practicable and reasonable across Crown land;
- (e) to designate the route of access on Tetlit Gwich'in Yukon land determined least harmful to the interest of the Tetlit Gwich'in while being reasonably suitable to the person wishing access;
- (f) to award costs, including interim costs;
- (g) to grant an interim order in respect of any matter in (a), (b), (c) or (d) where the Board has not heard all the evidence or completed its deliberation in respect of that matter;
- (h) except for a matter in respect of expropriation or acquisition of Tetlit Gwich'in Yukon land under chapter 5 of this appendix, to review periodically any order of the Board, upon application by any party to the proceedings, where there has been a material change since the Board made the order;
- (i) after a review is completed under (h), to affirm, amend or terminate any order of the Board; and
- (j) such additional powers and responsibilities as may be set out in the legislation establishing the Board.

6.1.2

An order of the Board may include:

- (a) the hours, days and times of the year during which access or use of the surface may be exercised;
- (b) notice requirements;
- (c) limitations on the location of use and the route of access;

- (d) limitations on equipment;
- (e) abandonment requirements and restoration work;
- (f) a requirement to provide security in the form of a letter of credit, guarantee or indemnity bond, insurance or any other form of security satisfactory to the Board;
- (g) rights of inspection or verification;
- (h) a requirement to pay the entry fee payable to the Tetlit Gwich'in;
- (i) a requirement to pay to the Tetlit Gwich'in the compensation determined;
- (j) limitations on the number of persons and on the activities which may be carried out by persons; and
- (k) such other terms and conditions as may be permitted by the legislation establishing the Board.

6.1.3 To the extent an order of the Board is in conflict with:

- (a) a decision document; or
- (b) any requirement imposed pursuant to any legislation regulating the activity for which the access is obtained, but not the access itself,

the decision document or the requirement shall prevail to the extent of that conflict whether the order was issued before or after the decision document or requirement.

6.2 COMPENSATION

6.2.1 In determining the amount of compensation for the Tetlit Gwich'in for access to, use of, or expropriation of Tetlit Gwich'in Yukon land, the Board shall consider:

- (a) the market value of the interest in the Tetlit Gwich'in Yukon land;
- (b) any loss of use, loss of opportunity or interference with the use of the Tetlit Gwich'in Yukon land;
- (c) any impact on fish and wildlife harvesting and on gathering within Tetlit Gwich'in Yukon land;
- (d) any impact on fish and wildlife and their habitat within Tetlit Gwich'in Yukon land;
- (e) any impact upon other Tetlit Gwich'in Yukon land;
- (f) any damage which may be caused to the Tetlit Gwich'in Yukon land;
- (g) any nuisance, inconvenience and noise;
- (h) any cultural or other special value of the Tetlit Gwich'in Yukon land to the Tetlit Gwich'in;

- (i) the expense associated with the implementation of any order of the Board; and
- (j) such other factors as may be permitted by the legislation establishing the Board,

but shall not:

- (k) decrease the compensation on account of any reversionary interest remaining in the Tetlit Gwich'in or any entry fee payable; and
- (l) increase the compensation by taking into account the value of mines and minerals on or under Tetlit Gwich'in Yukon land.

6.2.2 The Surface Rights Board legislation shall set out the authority of the Board to establish the entry fee and shall set out the parameters for establishment of the entry fee.

6.2.3 If an interim order for access is granted before all matters have been determined, a hearing in respect of all these outstanding matters shall be commenced no later than 30 days from the date of the interim order as the case may be.

6.3 MEMBERSHIP

6.3.1 The Surface Rights Board legislation shall provide that where an application is in respect of Tetlit Gwich'in Yukon land, one member of the panel shall be a member nominated to the Board by the Council for Yukon Indians.

6.4 INTERIM MEASURE

6.4.1 Until such time as a Surface Rights Board having jurisdiction in the primary use area is established, any matter which is to be determined by the Surface Rights Board shall be determined by arbitration pursuant to the *Arbitration Act*, R.S.Y. 1986, c. 7.

7

LAND USE PLANNING AND PROTECTION OF THE PEEL RIVER WATERSHED

7.1 LAND USE PLANNING

7.1.1 If any land use planning body is established for an area including any part of the primary use area, it shall include at least one nominee of the Tetlit Gwich'in.

7.1.2 Any nominee of the Tetlit Gwich'in shall be included within the entitlement of the First Nation of Na'cho N'y'ak Dun to nominate members to a land use planning body.

7.1.3 Any regional land use planning commission or other planning agency described in 7.1.1 shall consult with the Gwich'in Land Use Planning Board in order to make use of land use planning that has been done with respect to the Peel River watershed by the Mackenzie Delta Beaufort Sea Land Use Planning Commission and to discuss ongoing co-operative land use planning activities.

7.2 PROTECTION OF THE PEEL RIVER WATERSHED

7.2.1 A Peel River Watershed Advisory Committee ("the Committee") shall be established at the date of settlement legislation, and shall continue for a period of not more than two years from that date, unless the parties otherwise agree.

(a) The Committee shall include at least one nominee of each of the First Nation of Na'cho N'y'ak Dun, the Tetlit Gwich'in, Canada, the Government of the Yukon and the Government of the Northwest Territories providing that each of the above-named submit the name of a nominee for committee membership.

(b) Fifty percent of the members of the Committee shall be nominees of the Tetlit Gwich'in or the First Nation of Na'cho N'y'ak Dun, and 50 percent shall be nominees of Canada, the Government of the Yukon or the Government of the Northwest Territories.

7.2.3 The Committee shall consider and make recommendations respecting:

(a) the establishment of a water management agreement for the Peel River watershed;

(b) the establishment of a regional land use planning commission or similar agency within Yukon for any area which includes the Peel River watershed; and

(c) the need for, and establishment of, Special Management Areas, as defined in the Umbrella Final Agreement, or protected areas, as defined in this agreement, in the Peel River and Arctic Red River watersheds.

7.2.4 The Committee shall not consider or make recommendations concerning any matter respecting which another body has the power to consider and make recommendations where such other body is empowered to make recommendations to government and where such other body provides for representation by all parties described in 7.2.2(a) who would not be prohibited from participating by 7.2.7.

7.2.5 Canada shall consider the recommendations of the Committee.

7.2.6 The Committee may establish its own rules of procedure.

7.2.7 When the Committee is making recommendations or considering matters solely within the jurisdiction of one territorial government, the Committee member nominated by the government of the other territory shall not participate.

7.2.8 The costs of the Committee shall be the responsibility of Canada. The Committee shall prepare an annual budget subject to review and approval of Canada.

7.2.9 For the purposes of 7.2, the Peel River watershed excludes areas of overlap with the traditional territories of the Dawson First Nation and the Vuntut Gwich'in First Nation.

8 DEVELOPMENT ASSESSMENT

8.1 DEFINITIONS

8.1.1 In this chapter,

"development assessment legislation" means legislation enacted to implement the development assessment process set out in the Umbrella Final Agreement;

"environment" means the components of the Earth and includes:

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in (a),(b) and (c);

"project" means an enterprise or activity or class of enterprises or activities to be undertaken in the Yukon which is not exempt from screening and review;

"significant effect" means an effect which will likely diminish or harm the stock of or the quality of the land and water or any renewable resource in the primary use area; and

"Yukon Development Assessment Board (YDAB)" means the board established pursuant to development assessment legislation.

8.2 DEVELOPMENT ASSESSMENT LEGISLATION

8.2.1 Government shall consult with the Gwich'in Tribal Council during the drafting of any development assessment legislation which is to affect the primary use area.

8.2.2 Tetlit Gwich'in Yukon land shall be deemed to be settlement land within the meaning of the Umbrella Final Agreement for the purposes of determining the membership of any panel of YDAB established to review a project.

8.2.3 Where a project is located wholly or partially on Tetlit Gwich'in Yukon land, the Tetlit Gwich'in shall be authorized to issue a decision document in situations where a Yukon First Nation would be so authorized, in respect of its settlement lands, by virtue of its final agreement.

8.2.4 The Tetlit Gwich'in shall be bound by a decision document issued pursuant to 8.2.3 in the same manner as a decision body shall be bound pursuant to the First Nation of Na'cho N'yak Dun final agreement with respect to a decision document issued by that decision body.

8.2.5 If the Yukon development assessment process as provided in the Umbrella Final Agreement is enacted and if a designated office is established for an area which includes the primary use area, the designated office shall consult with the Gwich'in Tribal Council in respect of projects which are in, or likely to have a significant effect within, the primary use area.

8.3

INTERIM MEASURE

8.3.1

After the date of settlement legislation and prior to the establishment of a Yukon development assessment process as provided in the Umbrella Final Agreement, any project in the primary use area or which significantly affects lands and waters within the primary use area shall be subject to the following provisions:

- (a) no development or activity which will have a significant effect on the renewable resources of the primary use area will be authorized by Canada without the consent of the Tetlit Gwich'in or, failing such consent, the approval of the Minister of Indian Affairs and Northern Development;
- (b) in the event that there is a dispute as to whether a proposed development or activity will have a significant effect, the matter will be referred to the Minister of Indian Affairs and Northern Development for determination after hearing the parties;
- (c) the Environmental Assessment and Review Process (EARP), according to its terms and conditions and as amended from time to time, shall apply to any development or activity which has a significant effect in the primary use area;
- (d) the Tetlit Gwich'in shall be consulted with respect to the assessment of any development proposal in the primary use area; and
- (e) the Tetlit Gwich'in shall have the right to nominate two members for appointment to any public review panel established under (c).

9 HERITAGE RESOURCES

9.1 DEFINITIONS

9.1.1 In this chapter,

"documentary heritage resources" means public records or non-public records, regardless of physical form or characteristics, that are of heritage significance, including correspondence, memoranda, books, plans, maps, drawings, diagrams, pictorial or graphic works, photographs, films, microforms, sound recordings, videotapes, machine-readable records and any copy thereof;

"designated heritage site" means a heritage site designated as such pursuant to laws of general application;

"moveable heritage resources" means moveable non-documentary works or assemblies of works of people or of nature that are of scientific or cultural value for their archaeological, paleontological, ethnological, prehistoric, historic or aesthetic features, including moveable structures and objects;

"non-public records" means all documentary heritage resources other than public records; and

"public records" means records held by any department or agency or public office of any level of government, and records which were formerly held by any such department, agency or public office.

9.2 OWNERSHIP AND MANAGEMENT ON TETLIT GWICH'IN YUKON LAND

9.2.1 The Tetlit Gwich'in shall own and manage moveable heritage resources and non-moveable heritage resources and non-public records, other than records which are the private property of any person, found on Tetlit Gwich'in Yukon land and on those beds of waterbodies owned by the Tetlit Gwich'in.

9.2.2 Public records, wherever they are found, shall be owned and managed by the government by which they were created or held.

9.2.3 Agreements may be entered into by government and the Tetlit Gwich'in with respect to the ownership, custody or management of heritage resources.

9.2.4 If heritage resources are accidentally discovered on Tetlit Gwich'in Yukon land the following procedures shall be followed.

- (a) A person who discovers a heritage resource on Tetlit Gwich'in Yukon land shall take such steps as are reasonable in all the circumstances to safeguard the heritage resource and shall report as soon as practicable that discovery to the Tetlit Gwich'in.
- (b) A person described in (a) who is not exercising a right of access or a right to use Tetlit Gwich'in Yukon land provided for in this appendix may only continue to disturb a heritage site or moveable heritage resource with the consent of the Tetlit Gwich'in.

- (c) A person described in (a) who is exercising a right of access or a right to use Tetlit Gwich'in Yukon land provided for in this appendix shall not further disturb a heritage site or a moveable heritage resource unless permitted by laws of general application, and that person obtains:
 - (i) the consent of the Tetlit Gwich'in; or
 - (ii) failing consent, an order of the Surface Rights Board setting out the terms and conditions for further disturbing the heritage site or moveable heritage resources.
- (d) The Tetlit Gwich'in shall report, as soon as practicable, to government the discovery on Tetlit Gwich'in Yukon land of any documentary heritage resource reported to it under (a).
- (e) If a documentary heritage resource is a non-public record, the Tetlit Gwich'in shall make reasonable efforts to determine if it is privately owned.

9.2.5 The Tetlit Gwich'in shall own all documentary heritage resources found on Tetlit Gwich'in Yukon land other than public records or records which are the private property of any person.

9.3 GENERAL

9.3.1 The Tetlit Gwich'in or a Tetlit Gwich'in who is the owner of a heritage resource may transfer the ownership or custody of the heritage resource to a Yukon First Nation or to another aboriginal person.

9.3.2 Any granting of access to the public, third parties or government on Tetlit Gwich'in Yukon land shall not divest the Tetlit Gwich'in of the ownership or management of heritage resources on Tetlit Gwich'in Yukon land.

9.4 HERITAGE SITES

9.4.1 The ownership of Tetlit Gwich'in Yukon land is not affected by reason of that land being a designated heritage site.

9.4.2 Government shall advise the Tetlit Gwich'in when land within the primary use area or secondary use area is identified by government as a proposed designated heritage site.

9.4.3 Government shall consult with the Tetlit Gwich'in prior to establishing the terms and conditions of site management plans for:

- (a) designated heritage sites in the primary use area; and
- (b) in the secondary use area where such sites are related to Tetlit Gwich'in heritage.

9.4.4 Except as otherwise provided in this chapter, the protection of heritage resources in or discovered on lands in the primary use area other than Tetlit Gwich'in Yukon land, either by accident or otherwise, during construction or excavation, shall be provided for in laws of general application.

9.5 TETLIT GWICH'IN BURIAL SITES

9.5.1 Government and Tetlit Gwich'in shall each establish procedures to manage and protect Tetlit Gwich'in burial sites which shall:

- (a) restrict access to Tetlit Gwich'in burial sites to preserve the dignity of Tetlit Gwich'in burial sites;
- (b) where the Tetlit Gwich'in burial site is outside the primary use area, require the joint approval of government and the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located for any management plans for the Tetlit Gwich'in burial site;
- (c) where the Tetlit Gwich'in burial site is on land in the primary use area which is not Tetlit Gwich'in Yukon land, require the joint approval of government and the Tetlit Gwich'in for any management plans for the Tetlit Gwich'in burial site; and
- (d) provide that, subject to 9.5.2, where a Tetlit Gwich'in burial site is discovered, the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in, if the Tetlit Gwich'in burial site is in the primary use area, shall be informed and the Tetlit Gwich'in burial site shall not be further disturbed.

9.5.2 Where a person discovers a Tetlit Gwich'in burial site in the course of carrying on an activity authorized by government, a Yukon First Nation or the Tetlit Gwich'in, as the case may be, that person may carry on the activity with the agreement of the Yukon First Nation in whose traditional territory the Tetlit Gwich'in burial site is located or the Tetlit Gwich'in if the Tetlit Gwich'in burial site is in the primary use area.

9.5.3 In the absence of agreement under 9.5.2, the person may refer the dispute to arbitration under chapter 18 of this appendix for a determination of the terms and conditions upon which the Tetlit Gwich'in burial site may be further disturbed.

9.5.4 Any exhumation, examination and reburial of human remains from a Tetlit Gwich'in burial site ordered by the arbitrator under 9.5.3 shall be done by, or under the supervision of, the Tetlit Gwich'in.

9.5.5 Except as provided in 9.5.2 to 9.5.4, any exhumation, scientific examination and reburial of remains from Tetlit Gwich'in burial sites shall be at the discretion of the Tetlit Gwich'in.

9.6 CONSULTATION

9.6.1 Government shall consult with the Tetlit Gwich'in with respect to proposed legislation and policy relating to Tetlit Gwich'in heritage sites, burial sites, heritage resources and place names of historical or cultural significance to the Tetlit Gwich'in in the Yukon.

9.7 ECONOMIC OPPORTUNITIES

9.7.1 Canada shall provide written notice to the Tetlit Gwich'in of any invitation for public tenders in respect of contracts associated with the management of heritage sites directly related to the history or culture of the Tetlit Gwich'in.

9.7.2 The Tetlit Gwich'in shall have the first opportunity to accept any fixed term contract offered by Canada associated with the management of a designated heritage site in the primary use area.

9.7.3 Any failure to provide written notice pursuant to **9.7.1** shall not affect the public tender process or the contract awards resulting therefrom.

9.7.4 Failure to provide a first opportunity pursuant to **9.7.2** shall not affect any fixed term contract associated with the management of designated heritage sites.

9.7.5 Canada shall include in any public tender in respect of contracts associated with the management of designated heritage sites in the primary use area:

- (a) a criterion for Tetlit Gwich'in employment; and
- (b) a criterion for special knowledge or experience related to the designated heritage site.

9.7.6 Nothing in **9.7.5** shall be construed to mean that a criterion for Tetlit Gwich'in employment be the determining criterion in awarding any contract.

10 WATER RIGHTS AND MANAGEMENT

10.1 DEFINITIONS

10.1.1 In this chapter,

"Board" means the Water Board established for the Yukon pursuant to laws of general application;

"domestic use" has the same meaning as in the *Northern Inland Waters Act*, R.S. 1985, c. N-25;

"licence" means a licence issued pursuant to the *Northern Inland Waters Act*, R.S. 1985, c. N-25;

"traditional use" means the use of water, without substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, by the Tetlit Gwich'in for trapping and non-commercial harvesting, including transportation relating to such trapping and harvesting or for traditional heritage, cultural and spiritual purposes;

"waste" has the same meaning as in the *Northern Inland Waters Act*, R.S. 1985, c. N-25;

"water" has the same meaning as "waters" in the *Northern Inland Waters Act*, R.S. 1985, c. N-25; and

"use" includes the deposit of waste into water.

10.2 GENERAL

10.2.1 The property in water in the Yukon shall be determined by laws of general application.

10.2.2 Nothing in this chapter shall derogate from the ability of any person to use water for a domestic use in accordance with laws of general application.

10.3 WATER RIGHTS OF THE TETLIT GWICH'IN

10.3.1 Subject to laws of general application, a Tetlit Gwich'in shall have the right to use water for a traditional use in the primary and secondary use areas.

10.3.2 Notwithstanding laws of general application and **10.3.5**, no licence, fee or charge shall be required for a traditional use in the primary and secondary use areas.

10.3.3 Nothing in **10.3.1** shall be construed to grant a priority of use or a right to compensation.

10.3.4 Notwithstanding **10.2.1**, and subject to the provisions of this appendix and **14.5.1** of the Umbrella Final Agreement, the Tetlit Gwich'in shall have the exclusive right to use water which is on or flowing through Tetlit Gwich'in Yukon land when such water is on or flowing through Tetlit Gwich'in Yukon land.

10.3.5 Tetlit Gwich'in use of water under **10.3.4** is subject to laws of general application, provided that the Board shall not:

- (a) refuse to issue a licence for a use by the Tetlit Gwich'in; or
- (b) impose terms and conditions in a licence that are inconsistent with any terms and conditions of a Tetlit Gwich'in assignment pursuant to **10.3.7**;

unless the Board is satisfied that such water use will:

- (c) substantially alter the quantity, quality or rate of flow, including seasonal rate of flow, of water; or
- (d) result in a deposit of waste prohibited by the *Northern Inland Waters Act*, R.S. 1985, c. N-25.

10.3.6 Unless otherwise authorized by law, Tetlit Gwich'in use of water under **10.3.1** to **10.3.4** shall be subject to:

- (a) public navigation and passage on water;
- (b) the use of water for emergency purposes;
- (c) any hunting, trapping or fishing by the public; and
- (d) any right of access set out in this appendix.

10.3.7 The Tetlit Gwich'in may assign in whole or in part a right to use water set out in **10.3.4** and an assignee's use of water shall be subject to **10.3.5** and **10.3.6**.

10.3.8 Nothing in this chapter shall be construed to derogate from a Tetlit Gwich'in use of water on land which is not Tetlit Gwich'in Yukon land in accordance with law.

10.4 MANAGEMENT POWERS OF GOVERNMENT

10.4.1 Notwithstanding the Tetlit Gwich'in ownership of certain beds of waterbodies, government has the right to protect and manage water and beds of waterbodies, and to use water incidental to that right, throughout the primary use area for:

- (a) management, protection and research in respect of fish and wildlife and their habitats;
- (b) protection and management of navigation and transportation, establishment of navigation aids and devices and dredging of the beds of navigable waters;
- (c) protection of water supplies from contamination and degradation;
- (d) emergency purposes, including fighting fires and flood and icing control;
- (e) research and sampling of water quality and quantity; and
- (f) other such government public purposes.

10.5

WATER RIGHTS OF OTHER PARTIES ON TETLIT GWICH'IN YUKON LAND

10.5.1

Subject to **10.9**, any person who has a right or interest in Tetlit Gwich'in Yukon land, except an interest in land granted by the Tetlit Gwich'in, has the right to use water incidental to the exercise of that right or interest in Tetlit Gwich'in Yukon land, if permitted by and in accordance with laws of general application.

10.5.2

Where the Board licenses a water use to a person referred to in **10.5.1**, the term of that licence shall not extend beyond the term of the right or interest in Tetlit Gwich'in Yukon land.

10.5.3

A person holding a licence pursuant to the *Northern Inland Waters Act*, R.S. 1985, c. N-25, or a licence pursuant to the *Dominion Water Power Act*, R.S. 1985, c. W-4, for water on or flowing through Tetlit Gwich'in Yukon land when such water is on or flowing through Tetlit Gwich'in Yukon land, which licence was in existence on the date the land became Tetlit Gwich'in Yukon land, shall retain the rights thereunder as if the land had not become Tetlit Gwich'in Yukon land.

10.5.4

Where the term of a licence described in **10.5.3** is five years or more, the licensee shall have the right to apply to the Board for a renewal or replacement of the licence. The Board shall require that written notice of the application, in a form satisfactory to the Board, be given to the Tetlit Gwich'in, and shall provide the Tetlit Gwich'in an opportunity to be heard concerning terms and conditions to be attached to the renewal or replacement for the protection of the interest of the Tetlit Gwich'in.

10.5.5

Unless a person has a right of access without the consent of the Tetlit Gwich'in, a person requiring the use of Tetlit Gwich'in Yukon land, other than the parcel covered by that person's interest under **10.5.1**, in order to exercise a right to use water under **10.5.1** and **10.5.3** has a right of access to use that Tetlit Gwich'in Yukon land with the consent of the Tetlit Gwich'in or, failing consent, an order of the Surface Rights Board setting out terms and conditions of access.

10.5.6

The Surface Rights Board shall not make an order under **10.5.5** unless the person seeking access satisfies the Surface Rights Board that:

(a) such access is reasonably required; and

(b) such access is not also practicable and reasonable across Crown land.

10.5.7

Nothing in this chapter shall be construed to limit the Board's ability to refuse to issue a licence to a person referred to in **10.5**.

10.5.8

After three years from the date of settlement legislation and only in respect to the term following the expiry of that three-year period, a person holding a licence described in **10.5.3** shall be liable to pay compensation under the provisions of this chapter to the Tetlit Gwich'in in respect of the exercise of such licence, and shall be subject to the provisions of **10.8** and **10.9**.

10.6

PROTECTION OF QUANTITY, QUALITY AND RATE OF FLOW OF WATER

10.6.1

Subject to the rights of water users authorized in accordance with this chapter and laws of general application, the Tetlit Gwich'in have the right to have water which is on or flowing through or adjacent to Tetlit Gwich'in Yukon land remain substantially unaltered as to quantity, quality and rate of flow, including seasonal rate of flow.

10.6.2

The Tetlit Gwich'in shall not use water which is on or flowing through or adjacent to Tetlit Gwich'in Yukon land so as to substantially alter the quantity, quality or rate of flow, including seasonal rate of flow, except to the extent that such water use is authorized in accordance with **10.3.5** and is in conformity with the terms and conditions of any water licence granted to the Tetlit Gwich'in.

10.6.3

The Board shall not grant a licence that interferes with the rights provided in favour of the Tetlit Gwich'in in **10.6.1** unless:

- (a) notice, in a form prescribed by the Board, of receipt of an application has been given to the Tetlit Gwich'in; and
- (b) the Board is satisfied that,
 - (i) there is no alternative which could reasonably satisfy the requirements of the applicant, and
 - (ii) there are no reasonable measures whereby the applicant could avoid the interference.

10.6.4

In deciding whether to grant a licence that interferes with the rights provided in favour of the Tetlit Gwich'in in **10.6.1**, the Board shall consider:

- (a) the effect of the water use on fish, wildlife and their habitats;
- (b) the effect of the water use on the Tetlit Gwich'in; and
- (c) means of mitigating the interference.

10.6.5

If the Board grants a licence that interferes with the rights provided in favour of the Tetlit Gwich'in in **10.6.1**, the Board shall order the licensee to pay compensation for loss or damage to the Tetlit Gwich'in in accordance with **10.9**.

10.6.6

The Tetlit Gwich'in may apply to the Board to obtain an order for compensation from any person not licensed by the Board and using water in a manner not contrary to laws of general application, and the Board may order that compensation be paid where such use substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of water which is on or flowing through or is adjacent to Tetlit Gwich'in Yukon land.

10.6.7

The Tetlit Gwich'in have a cause of action against any person in respect of any use of water in violation of the terms and conditions of a licence to use water or contrary to laws of general application, which violation or contrary use substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of water which is on or flowing through or is adjacent to Tetlit Gwich'in Yukon land, with such remedies as if the Tetlit Gwich'in had riparian rights.

10.6.8

The Tetlit Gwich'in shall have standing at all times in a court of competent jurisdiction in the Yukon to seek a declaration as to whether any person substantially altering the quantity, quality or rate of flow, including seasonal rate of flow, of water in the primary use area has lawful authority to do so.

10.6.9 In any civil court proceeding pursuant to **10.6.8** or **10.6.9**, if the Tetlit Gwich'in prove that the defendant who is in violation of a water licence is substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at the place in the body of water where the defendant's use of water is taking place, then the onus shall rest on the defendant to prove that such use of water is not substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at any place downstream where the Tetlit Gwich'in have the exclusive right to use water pursuant to **10.3.4** and the Tetlit Gwich'in allege there is a substantial alteration to the quality, quantity or rate of flow, including seasonal rate of flow of the water.

10.6.10 In any civil court proceeding brought by a person using water in accordance with laws of general application against the Tetlit Gwich'in on grounds that the Tetlit Gwich'in are using water contrary to this chapter or laws of general application, if the person proves that the Tetlit Gwich'in in violation of a water licence are substantially altering the quality, quantity or rate of flow, including seasonal rate of flow, at the place in the body of water where the Tetlit Gwich'in use of water is taking place, then the onus shall rest on the Tetlit Gwich'in to prove that such use of water is not substantially altering the quality, quantity or the rate of flow, including seasonal rate of flow, at any place downstream where the person is using water and that person alleges there is a substantial alteration of the quality, quantity or rate of flow, including seasonal rate of flow of the water.

10.7 **PROTECTION OF TETLIT GWICH'IN TRADITIONAL USES ON LAND WHICH IS NOT TETLIT GWICH'IN YUKON LAND**

10.7.1 Before granting a licence in any drainage basin in the Yukon that causes substantial alteration in the quality, quantity or rate of flow, including seasonal rate of flow, of water so as to adversely affect a traditional use by a Tetlit Gwich'in in the primary use area, the Board shall:

- (a) give notice, in a form prescribed by the Board, of receipt of an application to the Tetlit Gwich'in; and
- (b) upon request of the Tetlit Gwich'in, consider whether,
 - (i) there is an alternative which could reasonably satisfy the requirements of the applicant while avoiding any adverse effect on the traditional use, and
 - (ii) there are reasonable measures whereby the applicant could avoid the adverse effect.

10.7.2 A licensee who substantially alters the quality, quantity or rate of flow, including seasonal rate of flow, of water in violation of a licence or contrary to law in a manner which causes loss or damage arising from an interference with a traditional use by a Tetlit Gwich'in within the primary use area shall be liable to pay compensation pursuant to **10.9** for such loss or damage thereby caused to that Tetlit Gwich'in .

10.8 **WATER USE DISPUTES**

10.8.1 The Tetlit Gwich'in may apply to the Board to determine whether:

- (a) there is an alternative that will reasonably satisfy the requirements of a licensee without interfering with the right of the Tetlit Gwich'in to have water which is on or flowing through or adjacent to Tetlit Gwich'in Yukon land remain substantially unaltered as to quantity, quality or rate of flow, including seasonal rate of flow;
- (b) measures can be taken to avoid interference with water rights referred to in (a) and uses of water of the Tetlit Gwich'in;
- (c) the water licensee is in compliance with the terms and conditions of a licence;
- (d) the terms and conditions of a licence need to be reviewed due to unforeseen impacts on the Tetlit Gwich'in; or
- (e) the Tetlit Gwich'in are entitled to compensation under the provisions of this chapter.

10.8.2 In addition to any other powers available to the Board, on application being made to the Board under 10.8.1, the Board may make an order amending, suspending or cancelling the licence, or deciding that the Tetlit Gwich'in are entitled to compensation by the licensee, or a combination of the foregoing.

10.8.3 Where an application under 10.8.1 is being considered by the Board and prior to the Board's decision thereon, the Board may make an interim order restraining the water licensee from exercising such rights with respect to water as are specified in the interim order and containing such terms and conditions as the Board may determine including the payment of interim compensation.

10.8.4 The Board may require a water licensee to provide evidence of financial responsibility in a form satisfactory to the Board, including cash deposit, letter of credit, performance bond or other form of financial instrument conditioned on due performance by the water licensee of the provisions of the licence, including provisions, terms and conditions and orders of the Board relating to abandonment, reclamation and restoration of the environment.

10.8.5 A Tetlit Gwich'in may apply to the Board to determine whether he or she is entitled to compensation pursuant to 10.7.2.

10.8.6 Where the Board pursuant to 10.8.5 determines that a Tetlit Gwich'in is entitled to compensation, the Board may exercise the powers set out in 10.8.2, 10.8.3 and 10.8.4.

10.9 **COMPENSATION**

10.9.1 Compensation to be paid to the Tetlit Gwich'in or a Tetlit Gwich'in pursuant to this chapter shall only be for provable loss or damage to the Tetlit Gwich'in or a Tetlit Gwich'in.

10.9.2 The amount and terms of compensation set out in 10.9.1 shall be determined by the Board.

10.9.3 When determining the amount and terms of compensation to be paid to the Tetlit Gwich'in pursuant to this chapter, the Board shall consider:

- (a) the effect of the water use on the Tetlit Gwich'in use of water on or adjacent to Tetlit Gwich'in Yukon land;

- (b) the effect of the water use on the Tetlit Gwich'in Yukon land, taking into account any cultural or special value of the land to the Tetlit Gwich'in;
- (c) the nuisance, inconvenience and noise caused by the water use to the Tetlit Gwich'in on Tetlit Gwich'in Yukon land;
- (d) the increment of the water alteration caused by the water use;
- (e) the cost of mitigation and restoration of the Tetlit Gwich'in Yukon land;
- (f) the duration of any of the above; and
- (g) any other factors set out in the *Northern Inland Waters Act*, R.S. 1985, c. N-25.

10.9.4 In a determination, pursuant to 10.9.3, of compensation payable to the Tetlit Gwich'in, the loss or damage suffered by the Tetlit Gwich'in for activity contrary to 10.6.1 shall include the loss or damage suffered by a Tetlit Gwich'in, but shall not include loss or damage compensable pursuant to 10.7.2.

10.9.5 In determining loss or damage suffered by a Tetlit Gwich'in under 10.9.4, the Board shall consider:

- (a) the effect of the water use on that Tetlit Gwich'in's use of water on or adjacent to Tetlit Gwich'in Yukon land;
- (b) the effect of the water use on fish and wildlife harvesting by that Tetlit Gwich'in;
- (c) the increment of the water alteration caused by the water use;
- (d) the duration of any of the above; and
- (e) any other factors set out in the *Northern Inland Waters Act*, R.S. 1985, c. N-25.

10.9.6 When determining the amount and terms of compensation to be paid to a Tetlit Gwich'in pursuant to 10.7.2, the Board shall consider:

- (a) subject to (b), the effect of the unlawful use of water on that Tetlit Gwich'in's traditional use of water;
- (b) the effect of the unlawful use of water on that Tetlit Gwich'in's traditional use in relation to traditional heritage, culture and spiritual purposes, but only on or adjacent to Tetlit Gwich'in Yukon land;
- (c) the incremental effect of the unlawful use of water on that Tetlit Gwich'in's traditional use;
- (d) the cost to that Tetlit Gwich'in of mitigation of damage caused to Tetlit Gwich'in Yukon land and restoration of Tetlit Gwich'in Yukon land for the traditional use;
- (e) the duration of any of the above; and

(f) any other factors set out in the *Northern Inland Waters Act*, R.S. 1985, c. N-25.

- 10.9.7 The Board may order periodic or lump sum compensation or both.
- 10.9.8 The Board may, on application, review and amend a compensation order from time to time to take into account changing circumstances.
- 10.9.9 The Board may award costs including interim costs and such costs may exceed costs which a court could award in a legal proceeding.
- 10.9.10 An order of the Board for compensation or for costs pursuant to 10.9 shall be enforceable as if it were an order of the Supreme Court of the Yukon.

11 BOUNDARIES AND MEASUREMENT OF TETLIT GWICH'IN YUKON LAND

11.1 DEFINITIONS

11.1.1 In this chapter,

"artificial boundary" means a boundary formed by a straight line or curve of prescribed radius joining points established on the ground by monuments;

"monument" means any device authorized by the Surveyor General to mark a boundary in a legal survey executed under some statutory authority;

"ordinary high water mark" of a body of water means the limit or edge of its bed and in the case of non-tidal waters it may be called "the bank" or "the limit of the bank"; and

"Surveyor General" means the Surveyor General of Canada Land appointed in the manner authorized by law or a person authorized by the Minister of Energy, Mines and Resources to carry out any or all of the duties of the Surveyor General.

11.2 ADMINISTRATION OF SURVEYS OF TETLIT GWICH'IN YUKON LAND

11.2.1 The boundaries of Tetlit Gwich'in Yukon land shall be surveyed in accordance with the instructions of the Surveyor General and dealt with by an official plan confirmed pursuant to the *Canada Lands Surveys Act*, R.S. 1985, c. L-6.

11.2.2 Standards of accuracy, techniques and specifications for the survey of Tetlit Gwich'in Yukon land shall be in accordance with the Manual of Instructions for the Survey of Canada Lands and other general or specific instructions issued by the Surveyor General from time to time.

11.2.3 The Surveyor General shall have the discretion to adjust boundaries of Tetlit Gwich'in Yukon land in order to reduce survey costs, subject to agreement of the Tetlit Gwich'in.

11.2.4 The Surveyor General has statutory responsibility for and control over all legal surveys arising out of this appendix.

11.2.5 Canada may establish, as necessary, either prior to or at the date of settlement legislation, control survey monuments along Yukon Highway #5 (the Dempster Highway), and in the vicinity of Tetlit Gwich'in Yukon land in order to expedite the efficient survey of Tetlit Gwich'in Yukon land. The method of establishment of and specifications for density and accuracy of control survey monuments shall be decided by the Surveys, Mapping and Remote Sensing Sector, Department of Energy, Mines and Resources.

11.2.6 Subject to 11.5.6, Canada shall pay the full cost of surveying all Tetlit Gwich'in Yukon land pursuant to 11.2.1.

11.2.7 The cost of subsequent surveys of Tetlit Gwich'in Yukon land shall be the responsibility of the Tetlit Gwich'in.

11.2.8 Final decisions and ultimate responsibility concerning survey of Tetlit Gwich'in Yukon land rest with Canada and such decisions shall be taken in consultation with the Government of the Yukon and the Gwich'in Tribal Council.

11.2.9 Surveys of Tetlit Gwich'in Yukon land shall be effected as soon as resources will allow.

11.3 SELECTION OF BOUNDARIES

11.3.1 Boundaries of Tetlit Gwich'in Yukon land shall be:

- (a) artificial boundaries;
- (b) natural boundaries, including but not limited to navigable and non-navigable waters, and well-defined heights of land; or
- (c) a combination of (a) and (b).

11.3.2 Where natural boundaries are used, the following provisions shall apply:

- (a) unless otherwise agreed during land selection, natural boundaries of Tetlit Gwich'in Yukon land along navigable water and non-navigable water shall be located on the ordinary high water mark;
- (b) natural boundaries, except natural boundaries of bodies of water as set out in 11.3.3, shall move with the various natural processes of erosion and accretion and, where an offset natural boundary is prescribed, it is also deemed to move and vary according to this natural movement of the natural boundary; and
- (c) where a natural boundary of Tetlit Gwich'in Yukon land involves a height of land which, in the opinion of the Surveyor General, is not well defined and where there is a requirement to establish all or part of that boundary by field survey, the Surveyor General shall have the authority to replace the sinuosities of the height of land by a series of monumented artificial boundaries closely approximating its mean position.

11.3.3 Where alteration of a natural river or lake is proposed for hydro-electric or other development purposes and such alteration affects a boundary or boundaries, any resurveys required for the proper redefinition of Tetlit Gwich'in Yukon land shall be undertaken at the cost of the proponent of the development.

11.3.4 At the time of field survey of boundaries of Tetlit Gwich'in Yukon land, recognition shall be given to the maps agreed to during land selection.

11.4 MONUMENTATION OF BOUNDARIES OF TETLIT GWICH'IN YUKON LAND

11.4.1 The boundaries of Tetlit Gwich'in Yukon land shall be defined by monuments placed in accordance with applicable regulations and instructions of the Surveyor General and in particular at the following locations:

- (a) all points of deflection of artificial boundaries and at intervals not exceeding one kilometre;
- (b) all terminal points where an artificial boundary intersects an artificial boundary or natural boundary and, in the case of intersection with a natural boundary of a body of water, the monuments shall be set back from the natural boundary on the artificial boundary at a reasonable and safe distance from the said natural boundary; and

(c) all intersections of artificial boundaries with the prescribed limits of Yukon Highway #5 (the Dempster Highway), a road or other right of way, established on each side of Yukon Highway #5 (the Dempster Highway), a road or right of way.

11.5 MEASUREMENT OF AREAS OF TETLIT GWICH'IN YUKON LAND

11.5.1 The Surveyor General shall have the discretion to adjust the boundaries of Tetlit Gwich'in Yukon land in order to achieve the total area of 1,554 square kilometres (approximately 600 square miles) referred to in 3.1.1. Any adjustment of boundaries of Tetlit Gwich'in Yukon land required shall be to the boundary or to those boundaries agreed upon during land selection.

11.5.2 The areas of surveyed Tetlit Gwich'in Yukon land shall be calculated using plane surveying methods.

11.5.3 The area of Tetlit Gwich'in Yukon land having numerous natural boundaries shall be determined by ground survey techniques or by utilizing the most accurate maps or aerial photographs available, or by any combination of the foregoing which, in the opinion of the Surveyor General, will give satisfactory accuracy. The areas calculated by plane survey or graphical methods or a combination of the two shall be calculated at mean ground elevation for the parcel concerned.

11.5.4 Prior to the confirmation of an official plan by the Surveyor General or the approval of an administrative or explanatory plan, written approval from the Tetlit Gwich'in shall be obtained to ensure that the Tetlit Gwich'in are satisfied that the parcel as surveyed conforms either to the area originally selected or as modified by the Surveyor General pursuant to 11.1.3 and 11.5.1. The plan and a copy of the surveyor's report shall be reviewed for conformance with the original land selection before recommending it to the Tetlit Gwich'in.

11.5.6 If the Tetlit Gwich'in reject the recommendation, the disagreement shall be resolved pursuant to chapter 18 of this appendix and the Surveyor General or his representative shall have standing as a party to the dispute. The resulting decision may direct that the costs of a resurvey be borne by one or more of the parties to the dispute.

11.5.7 After resolution of any disagreement pursuant to 11.5.6, the plan shall be returned directly to the Surveyor General for confirmation.

11.5.8 The determination and delineation of the total Tetlit Gwich'in Yukon land area pursuant to 11.5 shall be final and shall be governed by the artificial and natural boundaries thereby established, notwithstanding:

- (a) any discrepancy subsequently discovered between computed areas and areas enclosed by those boundaries; or
- (b) any changes to the areas of Tetlit Gwich'in Yukon land caused by movements of natural boundaries which are gradual and imperceptible from moment to moment.

11.6 EMPLOYMENT AND ECONOMIC OPPORTUNITIES

11.6.1 (a) Where employment in surveying of Tetlit Gwich'in Yukon land is generated as a direct consequence of this appendix, Canada shall include a criterion for Tetlit Gwich'in employment in any contract opportunities associated with the survey of Tetlit Gwich'in Yukon land.

(b) Nothing in (a) shall be construed to mean that the criterion for Tetlit Gwich'in employment shall be the determining criterion in awarding any contract.

11.6.2 (a) Where economic opportunities and benefits are associated with the survey of Tetlit Gwich'in Yukon land, the Tetlit Gwich'in shall have access to these opportunities and benefits. Any contract issued for the survey of Tetlit Gwich'in Yukon land shall contain the condition that the Tetlit Gwich'in and Tetlit Gwich'in businesses with the necessary qualifications and experience shall be given first consideration in providing technical and support services associated with the contract. A list of Tetlit Gwich'in businesses and Tetlit Gwich'in interested in providing such services to potential contractors for such surveys of the Tetlit Gwich'in Yukon land shall be included with all requests for proposals, and documentary proof the Tetlit Gwich'in businesses and Tetlit Gwich'in were given first consideration shall form part of a contractor's proposal.

(b) Where Tetlit Gwich'in Yukon land abuts settlement lands of the First Nation of Na'cho N'yak Dun, the Tetlit Gwich'in and the First Nation of Na'cho N'yak Dun shall agree on how to share the economic benefits in (a).

12 FISH AND WILDLIFE

12.1 DEFINITIONS

12.1.1 In this chapter,

"basic needs level" means the number or level of harvestable animals of a species negotiated pursuant to a comprehensive land claim agreement as a harvest to a Yukon First Nation in its traditional territory or to the Tetlit Gwich'in in the primary use area;

"Board" means the Fish and Wildlife Management Board established pursuant to the Umbrella Final Agreement;

"council" means a Renewable Resources Council established pursuant to the Umbrella Final Agreement;

"edible fish or wildlife product" means the flesh or organs of fish or wildlife that are used for food by people or domestic animals;

"freshwater fish" means all fish found in the Yukon other than salmon but does not include exotic species and transplanted population;

"furbearer" means any of the following species native to the Yukon: Castor including beaver; Alopex including white fox or arctic fox; Lutra including otter; Lynx including lynx; Martes including martens and fishers; Mustela including weasel and mink; Ondatra including muskrat; Vulpes including red, cross, black and silver fox; Gulo including wolverine; Canis including wolves and coyotes; Marmota including marmots; Tamiasciurus including red squirrel; and Spermophilus including ground squirrels;

"non-consumptive use" means a use of fish and wildlife that does not involve harvesting;

"non-edible by-product" means the fur, hide, skin, antlers, horns, skeleton or other portions of fish or wildlife not used for food but used for other purposes including but not limited to clothing, medicine, domestic or personal decoration or art;

"salmon" means Pacific salmon of the species Oncorhynchus nerka including sockeye; Oncorhynchus kisutch including coho; Oncorhynchus gorbuscha including pink; Oncorhynchus keta including chum; and Oncorhynchus tshawytscha including chinook;

"subsistence" means

- (a) the use of edible fish or wildlife products for sustenance and for food for traditional ceremonial purposes, and
- (b) the use of non-edible by-products of harvests in (a) for such domestic purposes as clothing, shelter or medicine, and for domestic spiritual and cultural purposes; but
- (c) except for traditional production of handicrafts and implements, does not include commercial uses of edible fish or wildlife products or non-edible by-products;

"total allowable harvest" means the total number or level of animals of a freshwater fish or wildlife species which, in the manner established by this chapter, are deemed not to be required for conservation; and

"use" includes both harvesting and non-consumptive activities.

12.2 GENERAL

12.2.1 This chapter sets out powers and responsibilities of government and the Tetlit Gwich'in for the management of fish and wildlife and their habitats, while respecting the Minister's ultimate jurisdiction, consistent with this chapter, for the management of fish and wildlife.

12.2.2 The management and harvesting of fish, wildlife and their habitats shall be governed by the principle of conservation.

12.2.3

- (a) The exercise of rights under this chapter is subject to limitations provided for in this appendix and to limitations provided in legislation enacted for purposes of conservation, public health or public safety.
- (b) Any limitation provided for in legislation pursuant to 12.2.3 must be consistent with this chapter, reasonably required to achieve those purposes and may only limit those rights to the extent necessary to achieve those purposes.
- (c) Government shall consult with the Tetlit Gwich'in before imposing a limitation pursuant to 12.2.3.

12.2.4 Except as provided in this chapter, nothing shall prevent Yukon residents and others from harvesting fish and wildlife in accordance with legislation.

12.2.5 Nothing in this appendix shall be construed as an admission by government that the *Migratory Birds Convention Act*, R.S. 1985, c.M-7, does not satisfy the terms of 12.2.3.

12.2.6 For the purposes of application of 12.2.3 to harvesting rights of the Tetlit Gwich'in for migratory game birds, conservation includes considerations related to conservation of migratory game birds indigenous to the Yukon while those migratory game birds are in other jurisdictions.

12.2.7 Nothing in this chapter shall be construed to prevent any person from harvesting fish and wildlife for survival in an emergency. Any such harvests under 12.2.7 shall be reported according to requirements established by the Board and shall be without prejudice to any basic needs level or adjusted basic needs level that may be in force from time to time.

12.2.8 It is intended that there not be any duplication in the public management of fish and wildlife.

12.2.9 Except as otherwise provided in laws of general application, no person shall waste edible fish or wildlife products.

12.2.10 In the management of fish and wildlife and the harvest allocation of fish and wildlife, non-consumptive uses of the resources shall be taken into account.

12.3 HARVESTING RIGHTS

12.3.1 (a) Subject to the provisions of this agreement the Tetlit Gwich'in have the exclusive right to harvest wildlife and fish on Tetlit Gwich'in Yukon land and in waters overlying such lands.

(b) A Tetlit Gwich'in shall have the right to harvest for subsistence, within the primary use area, the secondary use area and those areas of the traditional territory of the First Nation of Na'cho N'yak Dun which are not subject to any overlap with the traditional territory of another Yukon First Nation, all species of fish and wildlife for themselves and their families at all seasons of the year and in any numbers on Crown land within such areas to which they have a right of access pursuant to 4.2, subject only to limitations prescribed pursuant to this appendix.

12.3.2 The Tetlit Gwich'in shall have the right to employ traditional and current methods of and equipment for harvesting pursuant to 12.3.1, subject to limitations prescribed pursuant to this agreement.

12.3.3 Subject to laws of general application, the Tetlit Gwich'in shall have the right to trade with any person any non-edible by-product of fish and wildlife that is obtained from the harvesting of furbearers or incidental to harvesting pursuant to 12.3.1.

12.3.4 The Tetlit Gwich'in shall have the right to trade among themselves and with Yukon Indian people all edible fish and wildlife products harvested by them pursuant to 12.3.1 in order to maintain traditional sharing among aboriginal people in the Yukon and Northwest Territories for domestic purposes but not for commercial purposes.

12.3.5 The right of the Tetlit Gwich'in to harvest wildlife pursuant to 12.3.1(b) in any area other than the primary use area

(a) is subject to regulation by a Yukon First Nation pursuant to the final agreement of that First Nation, and

(b) shall be exercised within any basic needs level or subsistence needs established for the Yukon First Nation in whose traditional territory the right is exercised.

12.3.6 The right to harvest pursuant to 12.3.1 includes the right to possess and transport fish and wildlife parts and products within and between the Yukon and the Northwest Territories.

12.3.7 No tax, duty or such other fees or royalties shall be imposed on the Tetlit Gwich'in by government in respect of the export of wildlife products for traditional non-commercial purposes across the border with the Northwest Territories.

12.3.8 Where required, the Tetlit Gwich'in shall show proof of their enrolment as Gwich'in, as furnished by the Gwich'in Enrolment Board, and shall show proof of allocation of a harvesting opportunity when harvesting in an area in which a basic needs level applies. The Tetlit Gwich'in may, for the purpose of regulating harvesting, be required to obtain a permit or licence but shall not be required to pay any fee or tax imposed by government for any non-commercial permit or licence to harvest fish or wildlife.

12.3.9 A Tetlit Gwich'in who is 55 years of age or older at the date of settlement legislation shall not be required to show proof of enrolment under 12.3.5 but shall be required to identify himself or herself where necessary.

12.3.10 Subject to this appendix, the Tetlit Gwich'in shall comply with laws of general application when participating in commercial harvesting.

12.3.11 The Tetlit Gwich'in shall have the exclusive right to trap furbearers and to allocate traplines in the primary use area.

12.3.12 Nothing in 12.3.11 shall restrict access by government to traplines in the primary use area to handle or collect animals for scientific or management reasons in accordance with the provisions of the Umbrella Final Agreement.

12.3.13 The Tetlit Gwich'in may, with the consent of the Vuntut Gwich'in First Nation, trap in any part of the Old Crow Group Trapping Area which is in the secondary use area, subject to any limitations which apply to the rights of the Vuntut Gwich'in First Nation.

12.3.14 Tetlit Gwich'in have the right to use leg-hold drowning sets for furbearer harvesting unless the Minister determines that such sets are inhumane.

12.4 SPECIAL HARVESTING OPPORTUNITIES

12.4.1 In 12.4,

"special harvesting opportunity" means the basic needs level established for a species according to 12.4.4 or, in the absence of a basic needs level, the harvesting allocation established pursuant to 12.4.2.

12.4.2 When opportunities to harvest freshwater fish or wildlife are limited for conservation, public health or public safety, the total allowable harvest shall be allocated to give priority in the primary use area to the subsistence needs of the Tetlit Gwich'in while providing for the reasonable needs of other harvesters.

12.4.3 The priority in 12.4.2 is subject to the basic needs level established pursuant to 12.4.4 or an adjusted basic needs level established pursuant to 12.9.

Basic Needs Level

12.4.4 A basic needs level for key freshwater fish and wildlife species may be established in the primary use area by government and the Tetlit Gwich'in.

12.4.5 When determining a basic needs level, government and the Tetlit Gwich'in may consider the following:

- (a) recent and current harvests of the species or population by the Tetlit Gwich'in;
- (b) current personal consumption estimates of the species or population by the Tetlit Gwich'in for food;
- (c) recent and current harvests within the primary use area by other harvesters;

- (d) the ability of the species or population to satisfy the harvesting needs of the Tetlit Gwich'in as well as other users; and
- (e) such other factors as the parties may agree.

12.4.6 Government and the Tetlit Gwich'in may agree to conduct a study to define more clearly the factors listed in 12.4.5.

12.4.7 The harvest allocation negotiated for the final agreement of the First Nation of Na'cho N'yak Dun shall not apply in the primary use area.

12.4.8 The basic needs level established for the Tetlit Gwich'in shall not apply to the determination of the basic needs level of any Yukon First Nation negotiated pursuant to its Yukon First Nation final agreement.

Adjusted Basic Needs Level

12.4.9 Once a basic needs level has been established pursuant to 12.4.4, the Mayo District Renewable Resources Council may recommend to the Minister the adjustment of the basic needs level. In reaching a decision about adjusting the basic needs level, the Minister shall, in addition to the factors listed in 12.4.5, take into consideration the following factors:

- (a) human population change within the primary use area;
- (b) changing patterns of consumption;
- (c) the cultural and nutritional importance of fish and wildlife to the Tetlit Gwich'in and Yukon Indian people;
- (d) the use and harvesting of fish and wildlife for personal use by Yukon residents; and
- (e) the commercial consumptive and non-consumptive use of fish and wildlife.

12.4.10 In any year the adjusted basic needs level may vary upward or downward, but shall not fall below the basic needs level established pursuant to 12.4.4, unless the Tetlit Gwich'in consent.

Freshwater Fish Food Fishing

12.4.11 Government and the Tetlit Gwich'in may identify certain waterbodies within the primary use area to be used primarily for freshwater fish food fishing by the Tetlit Gwich'in.

12.4.12 Any waterbodies identified pursuant to 12.4.11 shall be listed from time to time in annex B and no such listing shall be considered an amendment to this appendix for the purposes of 2.1.2(a).

12.4.13 Where no waterbodies are identified pursuant to 12.4.11, government shall ensure that the freshwater fish food needs of the Tetlit Gwich'in receive primary consideration in the allocation of freshwater fish resources in the primary use area.

12.5 RIGHTS OF YUKON INDIAN PEOPLE

12.5.1 Subject to **12.3.1** and **12.5.4**, Yukon Indian people of the First Nation of Na'cho N'yak Dun, the Vuntut Gwich'in First Nation and the Dawson First Nation shall have the right to harvest for subsistence in the primary use area.

12.5.2 Yukon Indian people of Yukon First Nations other than the Yukon Indian people described in **12.5.1** may harvest for subsistence in the primary use area with the consent of the Tetlit Gwich'in. The consent of the First Nation of Na'cho N'yak Dun shall not be required for such harvesting.

12.5.3 When harvesting by the Tetlit Gwich'in is limited as described in **12.4**, the Tetlit Gwich'in may allocate their special harvesting opportunity to Tetlit Gwich'in or Yukon Indian people of Yukon First Nations.

12.5.4 When harvesting by the Tetlit Gwich'in is limited as described in **12.4**, Yukon Indian people may not harvest pursuant to **12.5.3**, in the primary use area, in excess of any special harvesting opportunity allocated to them by the Tetlit Gwich'in.

12.6 CONSULTATION

12.6.1 The Tetlit Gwich'in shall have standing as an interested party to participate in public proceedings of any agency, board or commission on matters that affect the management and conservation of fish, wildlife and their habitat in the primary use area.

12.6.2 Government shall consult with the Tetlit Gwich'in prior to taking action on fish or wildlife matters which may affect the exercise of the harvesting rights of the Tetlit Gwich'in under this appendix.

12.7 EDIBLE FISH OR WILDLIFE PRODUCT USAGE

12.7.1 Where the primary reason for harvesting wildlife is for purposes other than food, government and the Tetlit Gwich'in shall explore methods of acquiring any edible meat which is a by-product of the harvest to assist in satisfying the needs of the Tetlit Gwich'in for food.

12.8 WATERFRONT RIGHT OF WAY

12.8.1 Notwithstanding Tetlit Gwich'in ownership of the bed of waterbodies set out in chapter 3 of this appendix, government reserves the right to manage the fishery and to determine who may fish in those waterbodies which are adjacent to a waterfront right of way.

12.8.2 Where the Tetlit Gwich'in own the bed of a waterbody and there is no adjacent waterfront right of way, the Tetlit Gwich'in have an exclusive right to fish in that portion of the bed of the waterbody owned by the Tetlit Gwich'in.

12.9 HARVESTING RIGHTS ON YUKON NORTH SLOPE

12.9.1 The Tetlit Gwich'in have the right to hunt and fish for traditional purposes on the Yukon North Slope lands in areas traditionally used, and for species traditionally harvested, by the Gwich'in as provided in 14(16) of the Inuvialuit Final Agreement.

13 FOREST RESOURCES

13.1 DEFINITIONS

13.1.1 In this chapter,

"forest resources management" includes forest conservation, reforestation and silviculture;

"forest resources" includes all flora in a wild state; and

"tree" means a single-stemmed perennial woody plant in a wild state.

13.2 FOREST RESOURCES HARVESTING

13.2.1 Subject to the provisions of this appendix, the Tetlit Gwich'in shall own, manage, allocate and protect the forest resources on Tetlit Gwich'in Yukon land.

13.2.2 Subject to this chapter:

- (a) a Tetlit Gwich'in shall have the right, during all seasons of the year, to harvest forest resources on Crown land within the primary use area and secondary use area for purposes incidental to the exercise of traditional pursuits of hunting, fishing, trapping and gathering;
- (b) the Tetlit Gwich'in shall have the right, during all seasons of the year, to harvest trees on Crown land in the primary use area to a maximum of 500 cubic metres per calendar year to provide for non-commercial community purposes; and
- (c) a Tetlit Gwich'in shall have the right during all seasons of the year to harvest forest resources on Crown land in the primary use area incidental to the practice of traditional customs, culture and religion or for the traditional production of handicrafts and implements.

13.2.3 The rights provided by 13.2.2 are subject to legislation enacted for reasons of forest resources management, management, conservation, protection of the environment, public health and public safety.

13.2.4 For the purposes of 13.2.2, where legislation referred to in 13.2.3 requires the issuance of a permit or licence, such permit or licence issued to the Tetlit Gwich'in or to a Tetlit Gwich'in, as the case may be, shall be without fee.

13.2.5 The rights set out in 13.2.2 do not apply to Crown land:

- (a) where the exercise of a right conflicts with the carrying out of any activity authorized by government;
- (b) that is subject to a surface lease or an agreement for sale, unless the person holding such interest consents; or
- (c) where access by the public is limited or prohibited.

13.2.6 The Tetlit Gwich'in may dispose of trees harvested pursuant to 13.2.2 by way of trade with Yukon Indian people and with other Gwich'in for the purposes described in 13.2.2.

13.2.7 Nothing in 13.2.2 shall be construed to:

- (a) confer a right of ownership of forest resources upon the Tetlit Gwich'in or a Tetlit Gwich'in;
- (b) guarantee the supply of forest resources to the Tetlit Gwich'in or a Tetlit Gwich'in;
- (c) preclude any person from harvesting forest resources on Crown land if permitted by and in accordance with laws of general application; or
- (d) entitle the Tetlit Gwich'in or a Tetlit Gwich'in to any priority of use or right to any compensation for damage to, or loss of, forest resources or harvesting opportunities on Crown land.

13.3 FOREST RESOURCES ON TETLIT GWICH'IN YUKON LAND

13.3.1 The Tetlit Gwich'in shall manage, allocate and protect their forest resources in a manner consistent with any recommendations approved by an environmental impact assessment and review process or any development assessment process and any approved land use plans.

13.4 FOREST RESOURCES PEST AND DISEASE CONTROL

13.4.1 Where forest resources are threatened by pests or diseases the Tetlit Gwich'in shall consult the Minister before applying or permitting the application of pesticides and herbicides on Tetlit Gwich'in Yukon land.

13.4.2 Where forest resources are threatened by pests or diseases the Minister shall consult the Tetlit Gwich'in before applying pesticides and herbicides on Crown land within the primary use area.

13.4.3 Where a pest or disease affects forest resources on Tetlit Gwich'in Yukon land, government and the Tetlit Gwich'in shall take such action as they may agree to control the problem.

13.4.4 The application of pesticides or herbicides pursuant to 13.4.1, 13.4.2 and 13.4.3 shall be subject to chapter 8 of this appendix.

13.4.5 In emergency situations, nothing in 13.4.1 to 13.4.4 shall be construed to restrict the Minister's authority to control pests or diseases which threaten forest resources.

13.5 FOREST RESOURCES PROTECTION

13.5.1 Nothing in this chapter shall be construed to obligate government to fight forest fires.

13.5.2 Government shall consult with the Tetlit Gwich'in on general priorities for fighting forest fires on Tetlit Gwich'in Yukon land and on other lands in the primary use area.

13.5.3 For a period of five years after the date of settlement legislation, government shall continue to fight forest fires on Tetlit Gwich'in Yukon land:

- (a) in accordance with government policy from time to time for fighting forest fires on Crown land in the Yukon; and
- (b) within the financial and other resources available to government from time to time for fighting forest fires on Crown land in the Yukon.

13.5.4 Government may take any action it considers necessary on Tetlit Gwich'in Yukon land for control or extinguishment of forest fires. Where practicable, government shall give notice to the Tetlit Gwich'in prior to taking such action.

13.6 ECONOMIC OPPORTUNITIES

- 13.6.1** Nothing in this appendix shall be construed to affect the ability of the Tetlit Gwich'in to apply for and obtain a commercial timber permit on Crown land in the primary use area or to negotiate a timber agreement with government in accordance with laws of general application.
- 13.6.2** Government shall provide written notice to the Tetlit Gwich'in of any invitation for public tenders in respect of contracts associated with silviculture within the primary use area.
- 13.6.3** The Tetlit Gwich'in shall have the first opportunity to accept any fixed term contract offered by government associated with silviculture within the primary use area.
- 13.6.4** Any failure to provide written notice pursuant to **13.6.2** shall not affect the public tender process or the contract awards resulting therefrom.
- 13.6.5** Failure to provide a first opportunity pursuant to **13.6.3** shall not affect any fixed term contract entered into associated with silviculture within the primary use area.
- 13.6.6** Government shall include a criterion for Tetlit Gwich'in employment in any contract opportunities associated with silviculture within the primary use area.
- 13.6.7** Nothing in **13.6.6** shall be construed to mean that a criterion for Tetlit Gwich'in employment shall be the determining criterion in awarding any contract.
- 13.6.8** Where government requires extra fire fighters to fight forest fires within the primary use area it shall, where practicable, hire Tetlit Gwich'in.

14 RENEWABLE RESOURCES MANAGEMENT

14.1 TETLIT GWICH'IN PARTICIPATION

14.1.1 The Tetlit Gwich'in have the right to participate in any renewable resources management regime in the Yukon having jurisdiction in an area which includes the primary use area.

14.1.2 The right to participate in 14.1.1 shall be satisfied by the provisions of 14.2.

14.2 MAYO DISTRICT RENEWABLE RESOURCES COUNCIL

14.2.1 Any powers which the Mayo District Renewable Resources Council may have, pursuant to a comprehensive land claim agreement, within the traditional territory of the First Nation of Na'cho N'y'ak Dun, shall apply within the primary use area.

14.2.2 When exercising powers and responsibilities respecting the primary use area, the three members of the Council who are nominees of the First Nation of Na'cho N'y'ak Dun shall be replaced by three members who are nominees of the Gwich'in Tribal Council. The Gwich'in Tribal Council shall consult with the First Nation of Na'cho N'y'ak Dun respecting the selection of the Tetlit Gwich'in nominees to the Council. The nominees of the Gwich'in Tribal Council shall not be required to be residents of the Yukon.

14.2.3 When exercising powers and responsibilities respecting the primary use area, the Mayo District Renewable Resources Council may meet in Fort McPherson, Northwest Territories.

14.2.4 Any recommendations of the Council which, pursuant to the First Nation of Na'cho N'y'ak Dun final agreement, are required to be made to the First Nation of Na'cho N'y'ak Dun, shall be made to the Gwich'in Tribal Council where such recommendations concern the primary use area.

14.2.5 Nothing in this chapter shall be construed to prevent the Mayo District Renewable Resources Council from making recommendations to both the First Nation of Na'cho N'y'ak Dun and the Tetlit Gwich'in.

15 NON-RENEWABLE RESOURCES

15.1 SPECIFIED SUBSTANCES

15.1.1 The Tetlit Gwich'in shall exercise their specified substances right and a person having a mineral right on Tetlit Gwich'in Yukon land shall exercise such right so far as practicable in such a manner that the exercise of one right does not interfere with the exercise of the other right.

15.1.2 In the event that there is conflict between the exercise of the specified substances right and the exercise of the mineral right on Tetlit Gwich'in Yukon land, either the Tetlit Gwich'in or the person having the mineral right may apply to the Surface Rights Board.

15.1.3 Subject to 15.1.4, on an application under 15.1.2, the Surface Rights Board shall make an order specifying the terms and conditions of exercising either the specified substances right or the mineral right on Tetlit Gwich'in Yukon land or both so as to reduce such interference as far as practicable and, to the extent that interference with the exercise of the specified substances right cannot be avoided, the Board shall give priority to the person having the mineral right subject only to the payment of compensation to the Tetlit Gwich'in for:

- (a) interference with the exercise of the specified substances right; and
- (b) loss of opportunity to exercise the specified substances right, taking into account the associated production cost incurred by the person holding the mineral right.

15.1.4 The holder of an existing mineral right is not required to pay compensation under 15.1.3.

15.1.5 Subject to any order of the Surface Rights Board issued pursuant to 15.1.3, any person exercising a mineral right has a right to take, use, encounter, damage or destroy any specified substance incidental to the exercise of that mineral right without compensation to the Tetlit Gwich'in.

15.1.6 Subject to 15.1.7, any specified substance taken, used, encountered, damaged or destroyed under 15.1.5 shall become the property of the person exercising the mineral right.

15.1.7 A person who has acquired a property interest in any specified substance pursuant to 15.1.6 is deemed to have forfeited all his proprietary rights therein upon expiry or termination of his mineral right, and thereafter the Tetlit Gwich'in shall have the right to take and use that specified substance without compensation to that person.

15.2 QUARRIES

15.2.1 In 15.2, "government" includes the agents and contractors of government.

15.2.2 Where reasonable and practicable to do so, government shall endeavour to locate any quarry on land which is not Tetlit Gwich'in Yukon land.

- (a) Government shall have one year from the date of settlement legislation to identify any quarry on Tetlit Gwich'in Yukon land.
- (b) Government shall consult with the Tetlit Gwich'in in the identification of quarries on Tetlit Gwich'in Yukon land.

15.2.4 (a) Government shall have the exclusive use of such quarries identified in 15.2.3 and the right to take any construction material required from such quarries without the agreement of or compensation for such use or taking to the Tetlit Gwich'in.

(b) Government shall use a quarry in (a) in accordance with commonly accepted use standards and shall endeavour to minimize interference with other uses of the Tetlit Gwich'in Yukon land.

(c) On ending its use of a quarry in (a), government shall, if required by the Tetlit Gwich'in, restore the quarry in accordance with commonly accepted use standards including, as appropriate, clean-up, drainage, erosion control, re-contouring, overburden replacement and replanting of vegetation so that the quarry will blend in with the local landscape and vegetation.

(d) Where a dispute arises over the use or restoration of a quarry in (a) by government, either government or the Tetlit Gwich'in may refer the dispute to the Surface Rights Board.

15.2.5 Where government needs a quarry and no suitable alternative quarry is available on land which is not Tetlit Gwich'in Yukon land in the surrounding area, the Tetlit Gwich'in shall allow government to establish and work a quarry on Tetlit Gwich'in Yukon land which has not been identified under 15.2.3 and take construction material required for public purposes from the quarry under such terms and conditions as may be agreed by government and the Tetlit Gwich'in including compensation to the Tetlit Gwich'in for the construction material taken.

15.2.6 If the Tetlit Gwich'in and government are unable to reach agreement on government's need for a quarry or on whether there is a suitable alternative quarry or on the terms and conditions for government's use of a quarry under 15.2.5 within 30 days of government's request for the use of the quarry, government or the Tetlit Gwich'in may refer the dispute to the Surface Rights Board.

15.2.7 When the Surface Rights Board determines that government does not need a quarry on Tetlit Gwich'in Yukon land or that a suitable alternative on land which is not Tetlit Gwich'in Yukon land is available, the Surface Rights Board shall deny government the right to work the quarry.

15.2.8 Unless government and the Tetlit Gwich'in otherwise agree, government may use construction material removed from a quarry on Tetlit Gwich'in Yukon land only for public purposes either within the Yukon or no further than 30 kilometres beyond the boundaries of the Yukon.

15.3 **ACCESS TO TETLIT GWICH'IN YUKON LAND FOR AN EXISTING MINERAL RIGHT**

15.3.1 Subject to 4.6, any person having an existing mineral right, whether on Tetlit Gwich'in Yukon land or on land which is not Tetlit Gwich'in Yukon land, has a right of access, for purposes of exercising that right, to cross and make necessary stops on Tetlit Gwich'in Yukon land without the consent of the Tetlit Gwich'in if:

(a) the access is of a casual and insignificant nature; or

(b) the route used is generally recognized and was being used for access on a regular basis, whether year round or intermittently, either,

(i) prior to the date referred to in 1.8 (c) of appendix D to this agreement, or

(ii) where the land becomes Tetlit Gwich'in Yukon land after the date of this appendix, on the date the land became Tetlit Gwich'in Yukon land,

on the condition that the exercise of the right of access does not result in a significant alteration being made of that route.

15.3.2 Any person having an existing mineral right on Tetlit Gwich'in Yukon land has a right of access, for purposes of exercising that right, to use that parcel of Tetlit Gwich'in Yukon land without the consent of the Tetlit Gwich'in, where provided by laws of general application.

15.3.3 Any person having an existing mineral right on Tetlit Gwich'in Yukon land who does not have a right of access to Tetlit Gwich'in Yukon land under 15.3.1, or a right of access described in 3.4.1, has a right of access, for purposes of exercising that right, to cross and make necessary stops on Tetlit Gwich'in Yukon land with the consent of the Tetlit Gwich'in or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

15.3.4 Any person having an existing mineral right on land which is not Tetlit Gwich'in Yukon land who does not have a right of access to Tetlit Gwich'in Yukon land under 15.3.1 or a right of access described in 3.4.1, has a right of access, for purposes of exercising that right, to cross and make necessary stops on Tetlit Gwich'in Yukon land with the consent of the Tetlit Gwich'in or failing consent, with an order of the Surface Rights Board setting out the terms and conditions.

15.3.5 The Surface Rights Board shall not make an order under 15.3.4 unless the person seeking access satisfies the Board that:

- (a) the access is reasonably required; and
- (b) such access is not also practicable and reasonable across Crown land.

15.3.6 If the Surface Rights Board makes an order under 15.3.3 or 15.3.4, it may order compensation as a term or condition of access only if a private owner of land in similar circumstances would be entitled to compensation, and then only to the same extent.

15.4 ACCESS TO TETLIT GWICH'IN YUKON LAND FOR A NEW MINERAL RIGHT

15.4.1 Subject to 4.6, any person having a new mineral right on Tetlit Gwich'in Yukon land or on land which is not Tetlit Gwich'in Yukon land has a right of access, for purposes of exercising that new mineral right, to cross and make necessary stops on Tetlit Gwich'in Yukon land without the consent of the Tetlit Gwich'in if:

- (a) the access is of a casual and insignificant nature; or
- (b) the route used is generally recognized and was being used for access on a regular basis, whether year round or intermittently, either,
 - (i) prior to the date referred to in 1.8 (c) of appendix D of this agreement, or
 - (ii) where the land becomes Tetlit Gwich'in Yukon land after the date of settlement legislation, on the date the land became Tetlit Gwich'in Yukon land,

on the condition that the exercise of the right of access does not result in a significant alteration being made of that route.

15.4.2 Subject to 4.6, any person having a new mineral right on Tetlit Gwich'in Yukon land has a right of access, for purposes of exercising that new mineral right, to use that parcel of Tetlit Gwich'in Yukon land without the consent of the Tetlit Gwich'in if the exercise of the right of access does not require the use of heavy equipment or methods more disruptive or damaging to the land than hand labour methods.

15.4.3 Any person having a new mineral right on Tetlit Gwich'in Yukon land who does not have a right of access under 15.4.1 or 15.4.2, or a right of access described in 3.4.1, has a right of access, for purposes of exercising that new mineral right, to use, cross and make necessary stops on Tetlit Gwich'in Yukon land with the consent of the Tetlit Gwich'in or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

15.4.4 Any person having a new mineral right on land which is not Tetlit Gwich'in Yukon land who does not have a right of access included in the right under 15.4.1, or a right of access described in 3.4.1, has a right of access, for purposes of exercising that new mineral right, to cross and make necessary stops on Tetlit Gwich'in Yukon land with the consent of the Tetlit Gwich'in or failing consent, with an order of the Surface Rights Board setting out the terms and conditions of access.

15.4.5 The Board shall not make an order pursuant to 15.4.4 unless the person seeking access satisfies the Board that:

- (a) the access is reasonably required; and
- (b) the access is not also practicable and reasonable across Crown land.

15.5 **CONDITIONS OF ACCESS**

15.5.1 The rights of access provided by 15.3.1 and 15.4.1 are subject to the conditions that there shall be no:

- (a) significant damage to the Tetlit Gwich'in Yukon land or to improvements on the Tetlit Gwich'in Yukon land;
- (b) mischief committed on the Tetlit Gwich'in Yukon land;
- (c) significant interference with the use and peaceful enjoyment of the Tetlit Gwich'in Yukon land by the Tetlit Gwich'in;
- (d) permanent structure erected on the Tetlit Gwich'in Yukon land;
- (e) fee or charge payable to the Tetlit Gwich'in; or
- (f) compensation for damage other than for significant damage.

15.5.2 The rights of access provided by **15.3.2** and **15.4.2** are subject to the conditions that there shall be no:

- (a) unnecessary damage to the Tetlit Gwich'in Yukon land or significant damage to improvements on the Tetlit Gwich'in Yukon land;
- (b) mischief committed on the Tetlit Gwich'in Yukon land;
- (c) unnecessary interference with the use and peaceful enjoyment of the Tetlit Gwich'in Yukon land by the Tetlit Gwich'in;
- (d) fee or charge payable to the Tetlit Gwich'in; or
- (e) compensation for damage other than unnecessary damage to the Tetlit Gwich'in Yukon land or for significant damage to improvements on the Tetlit Gwich'in Yukon land.

15.5.3 A person who fails to comply with the conditions in **15.5.1(a)**, (b) or (c) and **15.5.2 (a)**, (b) or (c) shall be considered a trespasser with respect to that incident of access.

15.6 OTHER ACCESS RIGHTS

15.6.1 Nothing in this chapter shall be construed to prevent the holder of a mineral right from exercising a right of access pursuant to any other provision of this appendix.

16 TAXATION OF TETLIT GWICH'IN YUKON LAND

16.1 DEFINITIONS

In this chapter,

"unimproved Tetlit Gwich'in Yukon land" means Tetlit Gwich'in Yukon land outside a community boundary which is not improved Tetlit Gwich'in Yukon land;

"improved Tetlit Gwich'in Yukon land" means Tetlit Gwich'in Yukon land outside a community boundary which is used for commercial purposes or which contains a permanent structure, not including a cabin, camp, tent frame, cache, fish rack or other like improvement used primarily for trapping or non-commercial wildlife harvesting or other traditional purposes; and

"government" means local, territorial or federal government, as the case may be.

16.2 APPLICATION OF CERTAIN LAWS

16.2.1 Tetlit Gwich'in Yukon land shall be subject to laws of general application respecting property taxes and user-charges for any local government services.

16.2.2 Any residence of a Tetlit Gwich'in which is occupied as a personal residence on Tetlit Gwich'in Yukon land, and which otherwise meets the criteria, shall be deemed to be owner-occupied for the purposes of any homeowner's grant programs available from time to time, notwithstanding that title to the lands on which the residence is situated is held by the Gwich'in Tribal Council.

16.2.3 Unimproved Tetlit Gwich'in Yukon land is exempt from property taxes.

16.2.4 In the event a community boundary is altered so as to encompass a parcel of unimproved Tetlit Gwich'in Yukon land, the tax exempt status of the parcel shall not change until an agreement with respect to local government services has been entered into for that parcel between the Tetlit Gwich'in and government.

16.3 ARREARS

16.3.1 Notwithstanding laws of general application, Tetlit Gwich'in Yukon land shall not be subject to attachment, seizure or sale for non-payment of property taxes. If property taxes owing on such Tetlit Gwich'in Yukon land remain unpaid for more than two years, the taxing authority may withdraw the delivery of any or all services to such Tetlit Gwich'in Yukon land until the outstanding property taxes have been paid.

16.3.2 If the property taxes remain unpaid on Tetlit Gwich'in Yukon land six months after the withdrawal of any local government services under 16.3.1, the taxing authority may attach the assets of the Tetlit Gwich'in in addition to all other remedies, other than seizure or sale.

16.3.3 If arrears under any agreement negotiated between the Tetlit Gwich'in and government for the provision of local government services on Tetlit Gwich'in Yukon land remain unpaid for a period of six months, government may withdraw any or all such services to such land until the outstanding arrears have been paid.

16.3.4 If the arrears remain unpaid six months after the withdrawal of services under **16.3.3**, government may, without the consent of the Tetlit Gwich'in, refer the matter to arbitration under chapter 18 of this appendix.

17

ECONOMIC DEVELOPMENT MEASURES

17.1

GENERAL

17.1.1

Where federal public service employment opportunities exist in the primary use area, Canada shall treat the Tetlit Gwich'in on the same basis as a Yukon First Nation with respect to federal government obligations under the Umbrella Final Agreement in respect to employment opportunities and contracting.

17.1.2

Nothing in this appendix shall be construed to prevent a Tetlit Gwich'in or the Tetlit Gwich'in from accessing and making use of economic development programs of general application to a Canadian citizen.

17.1.3

Nothing in this chapter shall be construed to impose any financial obligation on government.

17.1.4

Measures identified in this chapter shall take into consideration government fiscal responsibility and economic objectives.

17.2

CONTRACTING

17.2.1

For contracts to be awarded in the primary use area, Canada undertakes to include on contract lists the names of those qualified Tetlit Gwich'in who have indicated an interest in contracting.

17.2.2

The Tetlit Gwich'in may request information from a federal contracting authority on contracts awarded in the Yukon. Where such information is publicly available the authority shall make all reasonable efforts to provide the requested information.

17.2.3

At the request of the Tetlit Gwich'in, Canada shall provide information on how to access federal supply and services contracts and standing offers, and how to register on lists or inventories which Canada uses for contracting.

17.2.4

Where practicable, provision of information in 17.2.3 shall be through seminars and workshops.

17.2.5

Canada shall ensure that the Tetlit Gwich'in are advised on how to access federal contracting, and that the Tetlit Gwich'in and businesses owned by the Tetlit Gwich'in are given full opportunity to be registered on any lists or inventories Canada uses for contracting purposes.

17.2.6

Any criteria for northern preference in contracting in the primary use area shall not exclude the Tetlit Gwich'in.

18

DISPUTE RESOLUTION

18.1.1 When the dispute resolution process described in the Umbrella Final Agreement comes into effect, any dispute arising from this appendix may, by agreement between government and the Tetlit Gwich'in, be referred to 26.3 or 26.4 of that dispute resolution process in accordance with the terms thereof. The agreement of any Yukon First Nation shall be required if it is a party to the dispute.

18.1.2 Until the dispute resolution process in the Umbrella Final Agreement comes into effect, the *Arbitration Act*, R.S.Y. 1986, c. 7, shall apply to any arbitration under this appendix.

ANNEX A

DESCRIPTION OF PRIMARY AND SECONDARY USE AREAS

Primary Use Area (Fort McPherson Group Trapping Area)

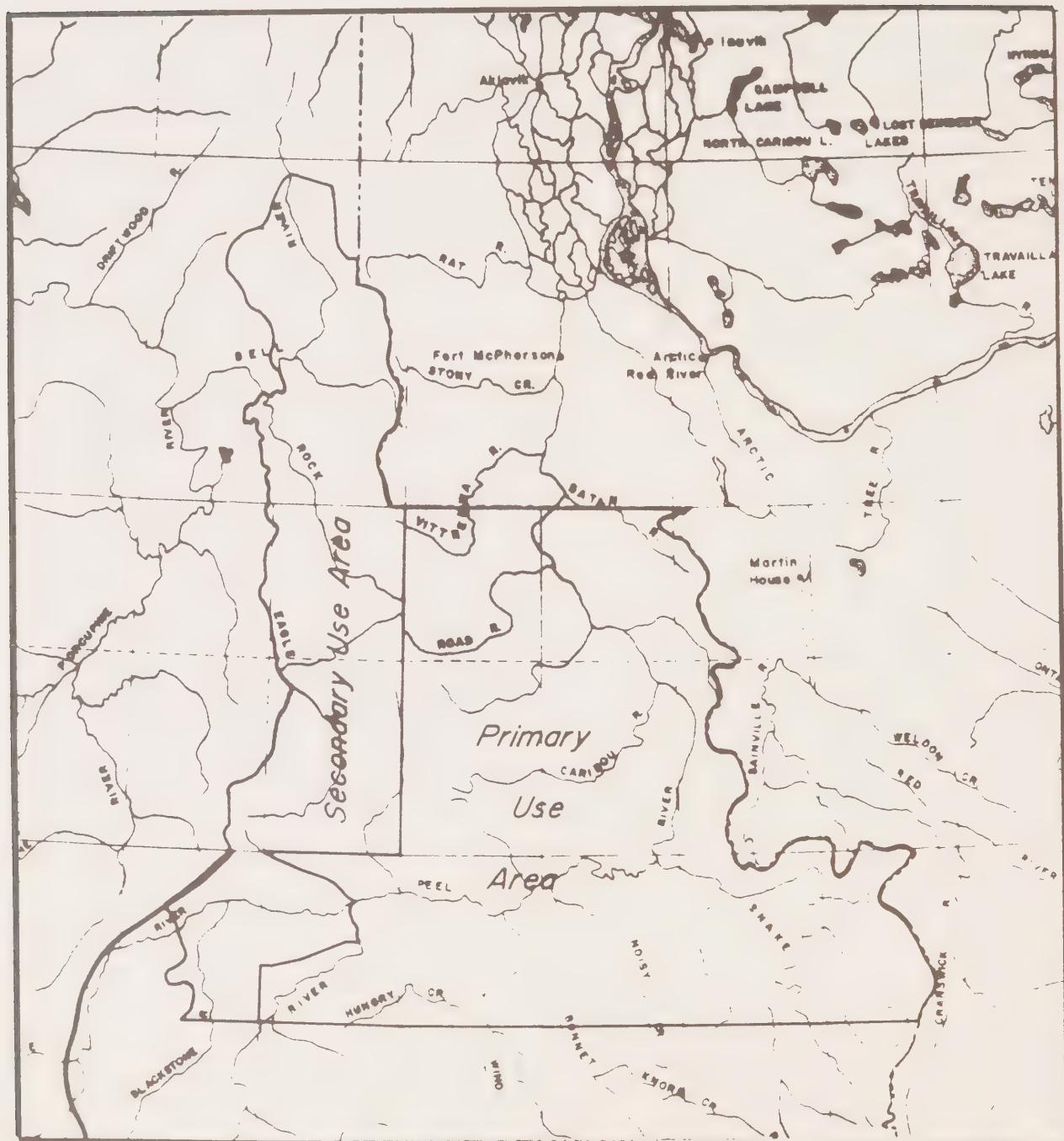
Starting at 67°N Lat 136°W Long and following the Yukon - Northwest Territories border to 65° 30' N Lat then west to 137°W Long then north to 65° 40'N Lat then east along the height of land line to the Hart River then to where the Hart River meets the Peel River then along Peel River to Daglish Creek then along Daglish Creek to 66°N Lat and 137°W Long then to east to 136°W Long and then north to the point of commencement 67°N Lat 136°W Long.

Secondary Use Area

Starting at 67°N Lat 136°W Long then south to 66°N Lat then west to 137°W Long then along Daglish Creek to confluence with Peel River then along Peel River to confluence with Hart River then south along Hart River to a point where height of land line of Primary Use Area meets the Hart River then west along height of land line to 65° 40' N Lat 137°W Long then south to 65° 30' N Lat then west to 137° 37'W Long then north following the easterly boundary for trapline #387, established by the Trapping Concession Boundary Regulation, Order-in-Council 1989/94, made pursuant to the *Wildlife Act*, R.S.Y. 1986, c. 178, ss. 153 and 178, to the southerly boundary of the right of way for the highway known as the Dempster Highway then north along the said right of way to 137° 15' W Long at approximately 66° 7' N Lat then north to a point on the major tributary of the Eagle River at approximately 66° 11' 30" then north to the confluence with the Eagle River then north to the confluence with the Bell River then east and north along the Bell River to the confluence with the Waters River then north to the headwaters of the Waters River then northerwesterly following the height of land to the headwaters of Anne Creek then following Anne Creek to confluence at Bell River then easterly following the height of land to the headwaters of the Little Bell River then south along Little Bell River to confluence at Summit Lake then east to the Yukon Northwest Territories border then south following the border to the point of commencement 67°N Lat 136°W Long.

ANNEX A

MAP OF PRIMARY USE AREA AND SECONDARY USE AREA¹



¹ Originals of this map, in 1:2,000,000 scale, are deposited with the Gwich'in Tribal Council, the First Nation of Na'cho N'yak Dun, the Vuntut Gwich'in First Nation and the Dawson First Nation

ANNEX B

DESCRIPTION OF TETLIT GWICH'IN YUKON LAND

1.0 GENERAL

1.1 The description of each parcel of Tetlit Gwich'in Yukon land is set out in this schedule.

1.2 The parties have made best efforts to list, in each description of a parcel of Tetlit Gwich'in Yukon land, all rights of way, easements, reservations, exceptions, restrictions and other interests, whether interests in land or not, as of the date of settlement legislation, but the listing is for information only and does not limit the application of 3.4.1 to a parcel of Tetlit Gwich'in Yukon land.

1.3 The listing of a right of way, easement, reservation, exception, restriction and other interest, whether an interest in land or not, is not a warranty that the interest listed is a valid, subsisting interest as of the date of settlement legislation.

1.4 The listing of a special condition in this annex creates that special condition, and the only special conditions applicable to a parcel of Tetlit Gwich'in Yukon land are those listed in this annex.

1.5 Unless otherwise provided in this annex, references to parcel identifiers, reservations, notations, plans and rights of way are, as the case may be, references to parcel identifiers, reservations, notations, plans and rights of way recorded in:

- (a) the land records of the Northern Affairs Program, Department of Indian Affairs and Northern Development;
- (b) the land records of the Lands Branch, Department of Community and Transportation Services, Government of the Yukon;
- (c) the Land Titles Office; or
- (d) the Canada Lands Surveys Records at Ottawa.

2.0 SITE SPECIFIC TETLIT GWICH'IN YUKON LAND

2.1 Government and the Tetlit Gwich'in have identified blocks of Crown land from which will be selected site specific Tetlit Gwich'in Yukon land.

2.2 The initialled maps of the blocks of Crown land in described in 2.1 shall form the basis for Orders in Council to withdraw the lands for the purpose of interim protection until a plan of survey of each parcel of site specific Tetlit Gwich'in Yukon land is deposited in the Lands Titles Office pursuant to 3.3.3 of this appendix.

2.3 Until a plan of survey of a parcel of site specific Tetlit Gwich'in Yukon land is deposited in the Land Titles Office, the Tetlit Gwich'in shall enjoy the use of the block of Crown land from which the Tetlit Gwich'in Yukon land is to be selected pursuant to 2.1, as if such Crown land was Tetlit Gwich'in Yukon land.

DESCRIPTIONS OF THE TETLIT GWICH'IN YUKON LAND

R-1FS being the parcel shown as R-1FS on Territorial Resource Base Maps numbered 106 L/14 and 106 L/15, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a westerly boundary the easterly bank of the Peel River and as an easterly boundary the westerly bank of Three Cabin Creek,
having an area of approximately 48.50 square kilometres;

R-3FS being the parcel shown as R-3FS on Territorial Resource Base Maps numbered 106 L/10, 106 L/11, 106 L/14 and 106 L/15, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a portion of the easterly boundary the westerly bank of the Peel River and as a westerly boundary the easterly bank of Nasrii Creek and as a northerly boundary of the southerly portion of the parcel the southerly bank of Sheh Tssoo Creek,
having an area of approximately 178.75 square kilometres;

R-4FS being the parcel shown as R-4FS on Territorial Resource Base Maps numbered 106 K/5, 106 K/12, 106 L/8 and 106 L/9, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a westerly and northerly boundary the easterly and southerly boundary, respectively, of the Peel River and as a northeasterly boundary the southwesterly boundary of Cooking Rocks Creek,
having an area of approximately 130.00 square kilometres;

R-5FS being the parcel shown as R-5FS on Territorial Resource Base Maps numbered 106 K/5, 106 L/8 and 106 L/9, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a northerly and easterly boundary the southerly and westerly banks respectively of the Peel River and as an westerly boundary the easterly bank of Caribou River,
having an area of approximately 51.88 square kilometres;

R-7FS

being the parcel shown as R-7FS on Territorial Resource Base Maps numbered 106 E/13, 106 E/14, 106 L/3 and 106 L/4, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a southerly boundary the northerly boundary of the Peel River,

having an area of approximately 529.38 square kilometres, subject to the following special condition:

- that said area may be adjusted pursuant to 11.5.1 by adjustment of the northerly boundary of the parcel, so that the total surveyed area of the parcels described in this annex is 1554.00 square kilometres;

R-8FS

being the parcel shown as R-8FS on Territorial Resource Base Maps numbered 106 K/4, 106 K/5 and 106 L/1, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a westerly boundary the easterly bank of the Peel River and as a northerly boundary the southerly boundary of George Creek (Paddle Creek),

having an area of approximately 158.00 square kilometres;

R-10FS

being the parcel shown as R-10FS on Territorial Resource Base Maps numbered 106 E/10, 106 E/11, 106 E/14 and 106 E/15, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a northerly boundary the southerly bank of the Peel River and as an easterly boundary the westerly bank of the Bonnet Plume River, but for greater certainty, not including:

- the 8 hectare parcel of Na'cho N'y'ak Dun settlement land located at the south end of Chappie Lake designated as S-187B in the Na'cho Ny'ak Dun final agreement,

having an area of approximately 162.50 square kilometres, subject to the following special condition:

- schedule B of chapter 13 of the Na'cho N'y'ak Dun final agreement concerning the establishment and management of the Bonnet Plume River as a heritage river;

R-11FS

being the parcel shown as R-11FS on Territorial Resource Base Maps numbered 106 F/15 and 106 F/16, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a northerly boundary the southerly banks of the two unnamed border lakes and as an easterly boundary a line 30.48 metres west of the Yukon - Northwest Territories border,

but for greater certainty, not including:

- the 4 hectare parcel of Na'cho Ny'a'k Dun settlement land located between the two unnamed border lakes, designated as S-139B in the Na'cho N'y'ak Dun final agreement,

having an area of approximately 43.13 square kilometres;

R-12FS being the parcel shown as R-12FS on Territorial Resource Base Maps numbered 106 E/16, 106 F/13, 106 K/4 and 106 L/1, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a southerly boundary the northerly bank of the Snake River and as a westerly boundary the easterly bank of the Peel River,

but for greater certainty, not including:

- the land described in Reservation 106E16-0000-00001,

having an area of approximately 142.50 square kilometres;

R-13FS being the parcel shown as R-13FS on Territorial Resource Base Maps numbered 106 E/16, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa, having as a northwesterly boundary the southeasterly bank of the Peel River, as a southwesterly boundary the northeasterly bank of Solo Creek and as a northeasterly boundary the southwesterly bank of the Snake River,

having an area of approximately 49.38 square kilometres;

R-14FS being the parcel shown as R-14FS on Territorial Resource Base Maps numbered 106 L/9 and 106 L/10, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources; at Ottawa, having as a southerly boundary the northerly bank of the Peel River and Brown Bear Creek and as a northerly boundary the southern bank of Chi Itree Lake and Seguin Lake,

having an area of approximately 50.63 square kilometres.

Site Specific Tetlit Gwich'in Yukon Land

S-2FS1 being the parcel to be selected from the area shown as S-2FS at Peel River on Territorial Resource Base Map numbered 106 L/15, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,

having an area of approximately 3.00 hectares;

S-3FS1 being the parcel to be selected from the area shown as S-3FS at Peel River on Territorial Resource Base Map numbered 106 L/15, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,

having an area of approximately 1.00 hectare;

S-4FS1 being the parcel to be selected from the area shown as S-4FS at Peel River on Territorial Resource Base Map numbered 106 L/15, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-5FS1 being the parcel to be selected from the area shown as S-5FS at Peel River on Territorial Resource Base Map numbered 106 L/15, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-6FS1 being the parcel to be selected from the area shown as S-6FS at Peel River on Territorial Resource Base Map numbered 106 L/10, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-7FS1 being the parcel to be selected from the area shown as S-7FS at Peel River on Territorial Resource Base Map numbered 106 L/10, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-8FS1 being the parcel to be selected from the area shown as S-8FS at Peel River on Territorial Resource Base Map numbered 106 L/10, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-9FS1 being the parcel to be selected from the area shown as S-9FS at Peel River on Territorial Resources Base Map numbered 106 L/10, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-10FS1 being the parcel to be selected from the area shown as S-10FS at Peel River on Territorial Resource Base Map numbered 106 L/10, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-11FS1 being the parcel to be selected from the area shown as S-11FS at Peel River on Territorial Resource Base Map numbered 106 E/16, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare;

S-12FS1 being the parcel to be selected from the area shown as S-12FS at Wind River on Territorial Resource Base Map numbered 106 E/14, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 4.00 hectares; and

S-13FS1 being the parcel to be selected from the area shown as S-13FS at Brown Bear Creek on Territorial Resource Base Map numbered 106 L/9, dated December 18, 1991, produced at a scale of 1:30,000 by Surveys and Mapping Branch, Department of Energy, Mines and Resources, at Ottawa,
having an area of approximately 1.00 hectare.

APPENDIX D

LAND SELECTION PROCESS

1 LAND SELECTION

- 1.1 Prior to land selection, the Gwich'in shall table their land use and occupancy maps for review by government.
- 1.2 The land selection processes for settlement lands and Gwich'in municipal lands shall be undertaken concurrently. Negotiations shall take place at locations to be determined by the parties prior to the commencement of land selection.
- 1.3 Prior to the commencement of land selection, government shall provide the Gwich'in with current data respecting the location and nature of existing government and third party interests in the settlement area, including government and surface leases, exploration agreements, recorded mining rights, timber permits and harvesting agreements, fee simple grants and the like.
- 1.4 Initial land selection maps shall be prepared for the settlement area by the Gwich'in, and may identify up to one and one-half times the total land quantum. The maps shall show subsurface selections, if any, under such lands. An estimate of the area of each selection shall also be indicated on the maps.
- 1.5 Government review and analysis of land selection maps shall occur primarily in the Northwest Territories, and negotiations and map exchanges shall be centralized in the Northwest Territories to expedite the land selection process.
- 1.6 Upon completion of all land selections, the maps and any agreements in respect of the selections shall be initialled by the parties.
 - 1.7 (a) The initialled land selection maps shall, if required, be transposed onto alternative scale maps. The transposing of the maps shall be the responsibility of government.
 - (b) Upon completion, the transposed maps shall be brought to the negotiating table for final review by the parties for accuracy.
- 1.8 (a) Unless it is otherwise agreed, the initialled agreements and maps shall form the basis for Orders-in-Council to withdraw the lands for purposes of interim protection in accordance with clause 1 of the Interim Provisions dated February 7, 1991. The Orders-in-Council are to be prepared as soon as possible after initialling.
 - (b) The parties shall develop a joint communications plan for the release of information and maps to the public.
 - (c) Upon withdrawal, both parties shall have 60 days to conduct a period of review and consultation concerning the initialled agreements and maps.
 - (d) Upon completion of the review period specified in (c), the initialled maps and agreements shall be confirmed or amended, and the land withdrawal amended by Order-in-Council.

- (e) The confirmed agreements and maps shall only be reopened for negotiation if specifically agreed by the parties.
- 1.9 (a) Where land proposed for selection is owned or ordinarily resided on by a person eligible to be a participant, the Gwich'in shall give written notice to that person that such lands are proposed for land selection and, prior to that selection being accepted by government, the Gwich'in shall obtain a written consent to such selection from that person. The Gwich'in shall obtain a transfer or release of that person's interest prior to the lands becoming Gwich'in lands.
 - (b) Existing fee simple lands are not available for selection unless the title holder consents.
- 1.10 Prior to the commencement of land selection, government shall provide the Gwich'in with maps or lists of all proposed parks or other protected areas in the settlement area. The identification of new parks or other protected areas may be considered in the course of land selection negotiations. Provisions relating to particular protected areas may be included in this agreement.
- 1.11 Gwich'in land selection shall be made so as to leave communities with sufficient land for public purposes and for private, residential and commercial purposes and to leave sufficient land which is reasonably accessible to communities for public use for recreation and harvesting wildlife.
- 1.12 Government shall provide a list of all identified hazardous waste sites and available information pertaining thereto at the time of land selection.

2 LAND SELECTION - SETTLEMENT LANDS

- 2.1 The initial land selection maps referred to in 1.4 shall be prepared using 1:250,000 scale National Topographic Series maps.
- 2.2 The Gwich'in shall indicate on the land selection maps any existing significant public routes which are in common use.
- 2.3 Government shall review the areas indicated on the maps provided by the Gwich'in and advise the Gwich'in of the position of government as to the suitability of those lands for negotiation.
- 2.4 Unless otherwise agreed, maps for the selection of settlement lands and Gwich'in municipal lands shall be tabled simultaneously for each community.
- 2.5 Land selections in the settlement area shall be fairly representative of the topography and quality of the lands in the settlement area.
- 2.6 The lands selected in respect of any community need not be identical in quantity to the lands selected in respect of other communities.
- 2.7 Where the objectives of the parties cannot be met through the process of land selection, negotiations at the time of land selection may provide the Gwich'in with special harvesting rights for fish and for other species of wildlife in designated areas.
- 2.8 During land selection, the parties may determine locations where the public rights of access in 20.2.1(a)(ii) and (iii) and the commercial rights of access in 20.4.2(a)(ii) and (iii) are restricted.

2.9 During land selection the parties shall determine those areas where the public access referred to in 20.2.2(a) and (b) shall apply. These negotiations will be intended to balance the desire of the Gwich'in for exclusive possession of their lands and the interest of the public in having sufficient opportunity to fish and hunt migratory game birds.

2.10 Unless otherwise agreed, Gwich'in lands shall not be selected within 30.48 metres (100 feet) of the boundary of the settlement area.

3 LOCAL GOVERNMENT BOUNDARY DETERMINATION

3.1 The Government of the Northwest Territories and the Gwich'in shall review the boundaries of local governments.

3.2 The review and analysis of local government boundaries shall be conducted by representatives of the Gwich'in and the Government of the Northwest Territories. Local government authorities may participate in the review under the aegis of the Government of the Northwest Territories.

3.3 After an agreement has been reached adjusting or confirming local government boundaries, the Government of the Northwest Territories shall adjust the boundaries forthwith.

3.4 Upon joint agreement by the Government of the Northwest Territories and the Gwich'in on local government boundaries, this review process shall terminate.

3.5 Where there are no local government boundaries established in legislation the Development Control Zone boundary shall constitute the boundary for the purpose of land selection.

4 LAND SELECTION - GWICH'IN MUNICIPAL LANDS

4.1 Initial data-base preparation shall be completed by the Government of the Northwest Territories for each local government, and include a text and/or maps as follows:

- (a) a map of the existing local government boundary to 1:50,000 scale;
- (b) local government mapping at 1:2,000 scale, showing all surveyed and unsurveyed parcels and topographic features;
- (c) textual data base showing land ownership/ dispositions including expiry dates of leases; and
- (d) where 1:2,000 maps are not available, the Government of the Northwest Territories shall provide an appropriate alternate map.

4.2 The Government of the Northwest Territories shall verify its respective data base in consultation with each local government authority.

4.3 Upon receipt, the Government of the Northwest Territories shall forward the data base to the Gwich'in Tribal Council.

4.4 The Gwich'in shall subsequently prepare land selection maps for each local government using local government planning maps where possible or the largest scale maps available.

4.5 (a) The level of detailed planning (i.e., identification of individual lot boundaries and road allowances within the built-up portion of the local government and future expansion areas within that boundary) may vary from local government to local government.

(b) In cases where detailed planning is not available for those lands identified for selection by the Gwich'in, including those lands selected within the area designated as expansion lands within the local government boundary, land selection shall proceed in accordance with

(i) a description of the building occupied by a person eligible to be a participant, including sufficient land around the building, taking into account past use and the local government norm, with the understanding that this description will be reflected within the subdivision plan, when prepared; or

(ii) a description of the unoccupied government land by way of a sketch map illustrating approximate dimensions with the understanding that the dimensions will be finalized when a subdivision plan is prepared.

4.6 The Gwich'in shall forward maps as described in 4.4 to the Government of the Northwest Territories, and a copy shall be sent to the appropriate public local authority for the preparation of a formal government response.

4.7 The Gwich'in and government may agree to the selection of lands, which shall become Gwich'in municipal lands, within local government boundaries as follows:

(a) lands noted within the Land Register of the Department of Indian Affairs and Northern Development as reserved in the name of the Indian Affairs Branch, with the exception of public roads or facilities within those lands;

(b) lands owned or occupied by persons eligible to be participants, whether through lease or occupancy, excepting public roads, provided the owner or occupant and any other person with a superior interest in the land agree in writing. The Gwich'in shall obtain a transfer or release of such interest prior to the lands becoming Gwich'in municipal lands;

(c) unoccupied Crown or Commissioner's lands; and

(d) lands within the built up areas of communities.

4.8 Lands in the following categories may not be selected:

(a) land which is privately owned in fee simple or subject to an agreement for sale, unless the owner or purchaser agrees in writing. The Gwich'in shall obtain a transfer or release of the owner or purchaser's interest prior to the lands becoming Gwich'in municipal lands; and

(b) all land administered by and/or reserved in the name of any department or agency of the federal, territorial or municipal governments, except in exceptional circumstances.

APPENDIX E

RATIFICATION PROCESS

1 GENERAL

- 1.1 Ratification of the agreement by the Gwich'in shall be prior to October 1, 1991.
- 1.2 Canada shall consider the agreement as soon as possible after its ratification by the Gwich'in.

2 RATIFICATION COMMITTEE

- 2.1 A Ratification Committee shall be established with responsibility for conducting the Gwich'in ratification process.
- 2.2 The Ratification Committee shall consist of two persons named by government, four persons named by the Gwich'in, of which one shall be named from each Gwich'in community, and a seventh person named by the other six.
- 2.3 The Ratification Committee shall prepare a budget, subject to review and approval by government. The approved expenses of the Committee shall be a charge on Canada.

3 OFFICIAL VOTERS LIST

- 3.1 The Ratification Committee shall prepare an Official Voters List which shall contain the names of all eligible voters. Only individuals whose names appear on such list shall be eligible to vote.
 - 3.2 (a) An eligible voter is a person who is determined by the Ratification Committee to be eligible to be enrolled as a participant under 4.2.1, who is at least 19 years of age before October 1, 1991, and who signifies consent to having his or her name entered on the Official Voters List.
 - (b) Notwithstanding (a), a person is not an eligible voter if that person is enrolled pursuant to any other comprehensive land claim agreement unless such person is eligible for Treaty 11 benefits.
- 3.3 A preliminary list of eligible voters shall be published in each Gwich'in community prior to July 13, 1991, and may be published in such other locations as determined by the Ratification Committee.
- 3.4 Application may be made to the Ratification Committee, prior to August 13, 1991,
 - (a) by individuals whose names are not on the preliminary voters list to have their names placed on the list; and
 - (b) by individuals whose names are on the preliminary voters list to delete names appearing on the preliminary voters list.

3.5 Applications in 3.4 shall be in writing and shall be heard by the Ratification Committee in the manner which it considers appropriate to the circumstances of the particular application. The Ratification Committee shall determine such applications on the best evidence that is available to it which may include unsworn written statements and hearsay evidence.

3.6 The decision of the Ratification Committee in respect of an application shall be final.

3.7 The Ratification Committee shall publish the Official Voters List prior to August 22, 1991.

4 INFORMATION CAMPAIGN

4.1 The Ratification Committee shall be responsible for affording eligible voters a reasonable opportunity to review the substance and details of this agreement.

4.2 The Ratification Committee shall organize community meetings to provide eligible voters the opportunity to discuss the agreement with representatives of government and the Gwich'in.

5 VOTING PROCESS

5.1 The vote on the ratification of this agreement shall be from September 16 to 20, inclusive, 1991.

5.2 The Ratification Committee shall determine the locations at which and the means by which votes shall be cast. The Ratification Committee may conduct an advance vote on August 31, 1991.

5.3 The vote shall be held on the same date or dates in all polling locations.

5.4 The date or dates of the vote and the polling locations shall be posted in each community in which a ballot may be cast prior to September 9, 1991.

5.5 The vote shall be by secret ballot.

5.6 The appearance, format and contents of the ballot shall be approved by the parties.

5.7 The Ratification Committee shall receive and tabulate all ballots.

6 RATIFICATION OF THE AGREEMENT BY THE GWICH'IN

6.1 The Gwich'in shall be considered to have ratified this agreement if:

(a) no less than three quarters of the eligible voters cast a ballot; and

(b) no less than two thirds of those eligible voters casting a ballot approve the agreement.

6.2 The Ratification Committee shall tabulate and publish figures showing the total number of ballots cast, the total number of ballots approving the agreement, the total number not approving the agreement, the total number of ballots spoiled and the total number of ballots rejected, but none of these figures shall be tabulated on a community basis or any basis other than the aggregate vote. The Ratification Committee shall publish these results in each Gwich'in community and may publish the results in such other locations as the Committee determines.

7 **RATIFICATION OF THE AGREEMENT BY CANADA**

7.1 After the Ratification Committee conducts the vote and publishes the results, and if the results of the vote constitute a ratification of this agreement by the Gwich'in, the agreement shall be presented by the Minister of Indian Affairs and Northern Development to Cabinet for approval.

8 **SIGNING OF THE AGREEMENT**

8.1 The agreement shall be signed by representatives of the Gwich'in and of government as soon as possible after approval by Cabinet.

9 **SETTLEMENT LEGISLATION**

9.1 Once this agreement has been signed by government and the Gwich'in, the Minister of Indian Affairs and Northern Development shall submit legislation to Parliament to give effect to this agreement.

